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EXTRAORDINARY

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PART II—Section 2 प्राधिकार से प्रकाशित

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NEW DELHI, THURSDAY, JULY 20, 1978/ASADHA 29, 1900

इस भाग भें भिष्म पृष्ठ संख्या दी जासी हैं जिससे कि वह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation

LOK SABHA

The following report of the Joint Committee on the Bill to provide for the appointment of a Lokpal to inquire into allegations of misconduct against public men and for matters connected therewith was presented to Lok Sabha on the 20th July, 1978:—

JOINT COMMITTEE ON THE LOKPAL BILL, 1977

COMPOSITION OF THE COMMITTEE

Shri Shyamnandan Mishra—Chairman

MEMBERS

Lok Sabha

- 2. Shri R. K. Amin
- 3. Shri Dilip Chakravarty
- 4. Shri Somnath Chatterjee
- 5. Shri R. D. Gattani
- 6 Shrimati Mrinal Gore
- 7. Shri Kanwar Lal Gupta
- 8. Shri Ram Jethmalani
- 9 Shri M. Kalyanasundaram
- 10. Shri Hari Vishnu Kamath
- 11 Shri B. C. Kamble
- 12. Shri Krishan Kant
- 13. Shri M. V. Krishanappa
- 14. Shri Madhu Limaye
- 15. Shri Mangal Deo
- 16. Shri Nathu Ram Mirdha
- *17. Shri Ragavalu Mohanarangam
- 18. Dr. V. A. Seyid Muhammad
- 19. Shri Narendra P. Nathwani

^{*}Appointed w.e.f. 2-12-1977 vice Shri S. D. Somasundaram resigned.

- 20. Shri Balasaheb Vikhe Patil
- 21. Shri Gauri Shankar Rai
- 22. Shri Saugata Roy
- 23. Shri Sasankasekhar Sanyal
- @24. Shri Daulat Ram Saran
 - 25. Shri B. Shankaranand
 - 26. Shri Jagannath Sharma
 - 27. Shri C. M. Stephen
 - 28. Shri K. Suryanarayana
- †29. Shri Hukam Deo Narain Yadav
- 30. Shri Charan Singh

Rajya Sabha

- 31. Shrimati Margaret Alva
- 32. Shri A. R. Antulay
- 33. Shri Sunder Singh Bhandari
- 34. Shri Bipinpal Das
- 35. Shri S. W. Dhabe
- 36. Shri Devendra Nath Dwivedi
- 37. Shri Vithal Gadgil
- 38. Shri Bhupesh Gupta
- 🗸 39. Shri G. Lakshmanan
 - 40. Shri N. G. Ranga
 - 41. Shri Rabi Ray
 - *42. Shri N. K. P. Salve
 - 43. Shri Sawaisingh Sisodia
- @ @44. Shri V. V. Swaminathan
 - 45. Shri Mahadeo Prasad Varma

SECRETARIAT

Shri Y. Sahai-Chief Legislative Committee Officer.

LEGISLATIVE COUNSEL

- 1. Shri R. V. S. Peri-Sastri—Joint Secretary and Legislative Counsel.
- 2. Shrimati V. S. Rama Devi—Joint Secretary and Legislative Counsel.

REPRESENTATIVE OF THE MINISTRY OF HOME AFFAIRS (DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS)

- 1. Shri C. R. Krishnaswamy Rao Sahib-Secretary.
- 2. Shri M. Prasad, Secretary.
- 3. Shri R. C. Misra, Addl. Secretary.
- 4. Shri G. P. Kalra, Under Secretary.

[@]Appointed w.e.f. 2-12-1977 vice Shri Chand Ram resigned.

[†]Appointed w.e.f. 2-12-1977 vice Shri Arif Baig resigned.

^{*}Appointed w.e.f. 9-5-1978 vice Shri D. P. Singh retired.

^{@@}Appointed w.s.f. 9-5-1978 vice Shri K. A. Krishnaswamy retired.

REPORT OF THE JOINT COMMITTEE

- I, the Chairman of the Joint Committee to which the Bill* to provide for the appointment of a Lokpal to inquire into allegations of misconduct against public men and for matters connected therewith was referred, having been authorised to submit the Report on their behalf, present their Report, with the Bill, as amended by the Committee, annexed thereto.
- 2. The Bill was introduced in Lok Sabha on the 28th July, 1977. A motion for suspension of the first proviso to Rule 74 of the Rules of Procedure and Conduct of Business in Lok Sabha in its application to the motion for reference of the Bill to a Joint Committee of the Houses was moved in Lok Sabha by Shri Charan Singh, the then Minister of Home Affairs on the 1st August, 1977 and was adopted. Thereafter, the motion for reference of the Bill to a Joint Committee of the Houses was moved in Lok Sabha by Shri Charan Singh, the then Minister of Home Affairs on the same day and was adopted.
 - 3. Rajya Sabha concurred in the said motion on the 3rd August, 1977.
- 4. The message from Rajya Sabha was published in Lok Sabha Bulletin—Part I on the 4th August, 1977.
 - 5. The Committee held 25 sittings in all.
- 6. The first sitting of the Committee was held on the 7th September, 1977 to draw up their programme of work. The Committee decided to invite written memoranda from the Bar Councils, Bar Associations and others interested in the subject matter of the Bill. The Committee also decided to issue a Press Communique in this behalf fixing 23rd September, 1977 as the last date for receipt of memoranda. On the 8th September, 1977, the Director of News Services, All India Radio and the Director of Doordarshan Kendra, New Delhi were also requested to broadcast the matter from all stations of All India Radio and telecast it from all Doordarshan Kendras on three successive days.

The Committee further decided that the opinion of the Chief Ministers of all the States and the Lokayuktas of States, where appointed so far, on the provisions of the Bill might also be obtained for their consideration.

The Committee also expressed a desire that, if necessary, the Minister of Law, Justice and Company Affairs and the Attorney-General of India might be invited before the Committee to give their opinion on certain constitutional aspects of the Bill.

7. At their sitting held on the 8th September, 1977, the Committee considered their future programme of work and tentatively decided to

^{*}Published in the Gazette of India, Extraordinary, Part II, Section 2, dated the 28th July, 1977.

complete clause-by-clause consideration of the Bill by the 25th October, 1977.

- 8. At their sitting held on the 27th September, 1977, the Committee decided that comments/suggestions on the provisions of the Bill might also be invited from all Members of Parliament. On the same day, a circular letter on the subject was issued to all Members of Parliament inviting their comments/suggestions on the provisions of the Bill. On the 28th September, 1977, the Director of News Services and the Director of Doordarshan Kendra, New Delhi were also requested to broadcast the matter from all Stations of All India Radio and telecast it from all Doordarshan Kendras on three successive days.
- 9. 30 Memoranda containing comments/suggestions on the provisions of the Bill were received by the Committee from various Associations, Organisations, individuals etc.
- 10. The Committee held preliminary general discussion on the provisions of the Bill at their sittings held on the 27th, 28th September, 9th and 10th October, 1977.

The Committee at their sitting held on the 10th October, 1977, also decided that the Attorney-General of India might be invited to give his opinion on certain constitutional aspects of the Bill before the Committee on the 24th October, 1977.

The Committee further decided that, for the purpose of eliciting opinion from the Attorney-General of India, the Members might formulate their points on the provisions of the Bill on which they would like to seek clarification from him.

- 11. At their sittings held on the 24th and 25th October, 1977, the Committee heard the views of Shri S. V. Gupte, Attorney-General of India on the points raised by the Members vis-a-vis the constitutional aspects of the Lokpal Bill, 1977.
- 12. As some Members of the Committee wanted to have some more time to formulate their views on various clauses of the Bill in the light of the preliminary general discussion held so far and also the opinion given by the Attorney-General of India, the Committee, at their sitting held on the 11th November, 1977, decided to postpone toking up clause-by-clause consideration of the Bill and ask for extension of time for presentation of the Report.
- 13. At their sittings held on the 2nd, 3rd and 4th January, 1978, the Committee, in the absence of the then Minister of Home Affairs (Shri Charan Singh), who was busy in connection with the visit of the President of the United States of America, deliberated upon the procedure to be adopted for clause-by-clause consideration of the Bill. The Committee also authorised the Chairman to have consultations with certain Members of the Committee representing various Parties/Groups with a view to arrive at a consensus on the controversial provisions which would facilitate taking decisions on the various clauses of the Bill. The Chairman accordingly informally consulted representative group of members on

the 5th January, 1978 and reported the result of the discussion to the Committee.

- 14. At their sittings held on the 30th, 31st January, 29th March, 17th, 18th and 28th April, 1978, the Committee held further discussion on some of the controversial aspects of the Bill.
- 15. At their sittings held on the 8th, 9th, 10th, 30th June and 1st July, 1978, the Committee, before taking up clause-by-clause consideration of the Bill, formulated their views on the controversial aspects with a view to facilitate taking decisions on the various clauses of the Bill.
- 16. The report of the Committee was to be presented by the 14th November, 1977. The Committee were granted three extensions of time—the first extension on the 14th November, 1977 up to the 20th February, 1978; the second extension on the 20th February, 1978 up to the 15th May, 1978 and the third extension on the 12th May, 1978 up to the 21st July, 1978.
- 17. At their sitting held on the 3rd July, 1978, the Committee decided that (i) the evidence tendered before them might be laid on the Tables of both Houses; and (ii) two copies each of the memoranda containing comments/suggestions received by the Committee from various Associations, Organisations, individuals etc. might be placed in the Parliament Library, after the Report had been presented, for reference by the Members of Parliament.
- 18. The Committee considered the Bill clause-by-clause at their sittings held on the 1st and the 3rd July, 1978.
- 19. The Committee considered and adopted the Report at their sitting held on the 12th July, 1978.
- 20. The observations of the Committee with regard to principal changes proposed in the Bill are detailed in the succeeding paragraphs.
- 21. Clause 2.—The Committee have made certain amendments in this clause as explained below:—

(i) Competent Authority

- (a) The Committee note that under the proposed provisions, the Prime Minister has himself been made the 'competent authority' in his own case. The Committee feel that since the role of the 'competent authority' under the provisions of the proposed Bill is to examine and suggest action on the findings or report of the Lokpal on the complaint against a public man, it would not be in conformity with the principles of jurisprudence and natural justice and apparently would look odd also if the Prime Minister is made the 'competent authority' for the complaints against himself. Besides this, it may even be embarassing to the Prime Minister if he is made to act as the judge of action in his own case. The Committee are, therefore, of the opinion that since the Council of Ministers including the Prime Minister is primarily responsible to the House of the People, the Speaker may be made as the 'competent authority' in the case of the Prime Minister.
- (b) The Committee also note that the 'competent authority' in the case of a Member of Parliament has not been given in the proposed Bill

but has been left to be prescribed by the Government after the commencement of the Act. The Committee are of the opinion that in order to avoid any ambiguity at a later stage, it would be more desirable to prescribe the 'competent authority' in the case of a Member of Parliament in the Bill itself. The Committee feel that Members of Parliament should not be subjected to any extraneous authority for their actions as Members of Parliament. The Committee are, therefore, of the view that the Presiding Officer of the respective Houses of Parliament should be made the 'competent authority' in the case of a Member of Parliament and where the complaint is against the Speaker, the 'competent authority' in his case should be the Deputy Speaker of the House of the People. The Committee feel that the same considerations should apply in the case of Members of Legislative Assemblies for Union territories.

- Part (a) of clause 2 has been amended and a new sub-clause (2) to this clause has been added accordingly.
- (ii) Complaint—The Committee are of the opinion that the complaint alleging commission of misconduct against a public man should relate to the period in which such public man has held any of the offices mentioned in part (g) of this clause.
- Part (b) of clause 2 has been amended and a new part (c) has been added accordingly.
- (iii) Chief Minister of a State—The Committee feel that since the Chief Ministers were primarily answerable to their respective Legislatures and not to Parliament, and as per opinion of the Attorney-General of India, the State Legislatures are competent to legislate on the subject matter under item 45 in List III (Concurrent List) of the Seventh Schedule to the Constitution of India, the Central Government should not ordinarily step in the area which falls within the domain of the States. It would not, therefore, be desirable to bring the Chief Ministers within the purview of the proposed legislation. The Committee are further of the opinion that when an example is set by the Centre, it would automatically be followed by the States under the pressure of public opinion. Even if there are cases which are not taken care of by the States, the Central Government are already vested with powers to appoint Commissions of Inquiry under the Commissions of Inquiry Act, 1952 to deal with them.

Part (g) (iii) has, therefore, been omitted.

- 22. Clause 3.—(i) The Committee note that the definition of the term 'misconduct' proposed in this clause is too wide and is, therefore, likely to be amenable to different interpretations. The Committee feel that the term 'misconduct' in the case of a public man other than a legislator should be restricted to cover cases in which—
 - (a) he is actuated in the discharge of his functions as such public man by corrupt motives; or
 - (b) he abuses, or attempts to abuse, or knowingly allows to be abused, his position as such public man for securing for himself or for any of his relatives or associates directly or indirectly any valuable thing or pecuniary advantage; or
 - (() any act or omission by him constitutes corruption.

The Committee also feel that since the Members of Parliament do not exercise any executive powers, they should not be treated at par with other public men exercising such powers. Therefore, the concept of 'misconduct' for Members of Parliament and other public men should not be the same and that a legislator may be regarded as committing misconduct only if he abuses, or attempts to abuse or knowingly allows to be abused, his position as such legislator for securing for himself directly or indirectly any valuable thing or pecuniary advantage. The Committee are further of the opinion that the term 'relative' should be limited to very close relatives and should be defined in the Bill itself.

(ii) Sub-clause (3) of this clause has been omitted as a consequence of excluding the Chief Minister of a State from the purview of the Bill.

The clause has been amended accordingly.

23. Clause 4.—The Committee are of the opinion that in order to associate Parliament with the machinery for the appointment of the Lokpal, provision may be made to enable the Chairman of the Council of States and the Speaker of the House of the People to consult the leaders of various Parties and Groups in the respective Houses of Parliament in regard to the appointment of a Lokpal.

A proviso to sub-clause (1) of this clause has been added accordingly.

24. Clause 8.—The Committee are of the opinion that the mode of appointment of Special Lokpals should also be on the lines suggested for the appointment of Lokpal in sub-clause (1) of clause 4.

A new proviso to sub-clause (1) of this clause has been added accordly.

25. Clause 9.—(i) The Committee feel that in order to ensure the independence of the proposed institution of Lokpal, the Lokpal should have the powers to appoint the officers and staff required to assist him in the discharge of his functions.

Sub-clause (1) of this clause has been amended accordingly.

(ii) The Committee are of the view that in order to ensure smooth, efficient and independent functioning of the Lokpal, the officers and staff appointed to assist him and the officers/employees/investigating agencies of the Central Government or a State Government whose services are secured by him for dealing with the complaints, while discharging their functions under the provisions of the proposed legislation, should be subject to the exclusive administrative control and direction of the Lokpal.

A new sub-clause (4) to this clause has been added accordingly.

26. Clause 10.—The Committee are of the view that if during the course of his enquiry into any allegation of misconduct against a public man, the Lokpal considers it necessary for the purpose of his enquiry to inquire into any act or conduct of any other person, he should be authorised to do so.

A new sub-clause (2) to this clause has been added accordingly.

27. Clause 11.—In view of the provisions made in the new sub-clause (2) of clause 10, the provisions contained in sub-clause (2) of this clause become redundant.

Sub-clause (2) of this clause has, therefore, been omitted.

- 28. Clause 12.—The Committee have made certain amendments in this clause as explained below:—
 - (i) The Committee are of the opinion that only employees of Government, Local authorities, statutory corporations and Government companies should be debarred from making complaints under the proposed legislation.
 - An Explanation to sub-clause (1) of this clause has been added accordingly.
 - (ii) The Committee are of the opinion that a complaint against a legislator should first be made to the competent authority concerned. On receipt of the complaint, the competent authority should examine it and if, after having regard to the nature of the allegations made in the complaint, the provisions of Article 105 of the Constitution or, as the case may be, the provisions of Section 16 of the Government of Union Territories Act, 1963 and all the circumstances of the case, finds it fit for investigation by the Lokpal, he may refer it to him or deal with it in such manner as he may deem fit:

A new sub-clause (2) to this clause has been added accordingly.

- (iii) The Committee feel that in case a complainant is not in a position to deposit the sum of one thousand rupees required to be deposited alongwith the complaint under original subclause (3), he should make an application for exemption to the Lokpal.
- The sub-clause has been amended accordingly. [vide new sub-clause (3)].
- (iv) The other amendments made in this clause are of a consequential nature.
- 29. Clause 14.—The Committee are of the opinion that the enquiry in respect of a complaint against a legislator should not be given any publicity till the stage of communication or announcement of the findings and it should be conducted only in camera as any premature publicity will damage his public image.

A new proviso to sub-clause (2) of this clause has been added accordingly.

30. Clause 17.—(i) The Committee are of the opinion that it should be made obligatory on the part of the Lokpal, after he has communicated his findings and recommendations to the competent authority, to inform the complainant and the concerned publicman about his having done so in order to enable them to know as to where the matter stood. The Committee are also of the view that when the Lokpal makes a special report, he should intimate the complainant, public man and the competent authority concerned accordingly.

Part (b) of sub-clause (1) and sub-clause (3) of this clause have been amended accordingly.

(ii) The Committee are of the view that in order to avoid delay on the part of Government, there should be a time-limit of ninety days within which the special report or the annual report together with the explanatory memorandum thereon should be laid before each House of Parliament. In computing the said period of ninety days, the period when the Parliament is not in session should be exclude.

Sub-clause (5) of this clause has been amended accordingly.

- (iii) The other amendments made in this clause are of a drafting and verbal nature.
- 31. Clause 18.—In view of the amendment made in clause 2 of the proposed Bill relating to 'competent authority' in the case of Prime Minister, the provisions contained in this clause become redundant.

The clause has, therefore, been omitted and original clauses 19 and 20 have been renumbered as clauses 18 and 19.

32. New clause 20.—The Committee are of the opinion that a complaint against a legislator or any proceedings connected therewith at any stage should neither be disclosed nor published by the complainant or any other person or authority concerned till the stage of announcement or communication of the findings on the allegations made in such a complaint. Any contravention thereof should be treated as a criminal offence and should be punishable with imprisonment for a maximum period of six months or with fine or with both.

A new clause has been added accordingly.

33. Clause 22.—(i) The Committee are of the opinion that the expression 'High Court' should be defined as meaning the High Court within the jurisdiction of which the person convicted ordinarily resides or carries on business or personally works for gain or the High Court within whose jurisdiction the order of conviction has been passed.

An Explanation to sub-clause (4) of the clause has been added accordingly.

(ii) In view of the definition suggested in the new Explanation to sub-clause (4) of this clause, the provisions contained in sub-clause (6) of this clause become redundant.

Sub-clause (6) of this clause has, therefore, been omitted.

34. New clause 23.—The Committee are of the view that in order to have a check on the filing of frivolous or false complaints, a provision for deterrent punishment should be incorporated in the Bill itself. The Committee feel that a provision for punishment of imprisonment for a maximum period of one year and a fine upto three thousand rupees would be a salutary one and would help to a great extent in checking such complaints.

The Committee are further of the opinion that the public man, on conviction of the person making false complaints, should be suitably compensated and the court should be empowered to award, out of the

amount of five, such amount of compensation to him as it may consider appropriate.

A new clause has been added accordingly.

35. Clause 24 [Original clause 23].—(i) The Committee are of the opinion that the functions of the Lokpal, to start with, should be confined only to the investigation of complaints alleging misconduct against a public man and no additional functions need be conferred on him.

Sub-clause (1) of this clause has, therefore, been omitted.

- (ii) The amendment made in sub-clause (3) of this clause is of a consequential nature.
- 36. New clause 26.—The Committee are of the view that provision for compensating or rewarding a complainant should be made in a case where the complaint has been substantiated either wholly or partly and the Lokpal considers, having regard to the expenses incurred by the complainant and other circumstances of the case, that the complainant deserves to be compensated or rewarded.

A new clause has, therefore, been added accordingly.

- 37. Clause 27 [Original clause 25].—The amendment made in subclause (2) of this clause is for excluding expressly proceedings under clause 22 relating to trial of certain offences.
- 38. Clause 28 [Original clause 26].—The Committee are of the view that the Lokpal should not delegate his powers relating to summary trial under clause 22 of the Bill.

The clause has been amended accordingly.

- 39. New clause 31.—Addition of this new clause is of a consequential nature.
- 40. Clause 1.—The amendment made in this clause is of a formal nature.
- 41. Enacting Formula.—The amendment made in the Enacting Formula is of a formal nature.
- 42. The Joint Committee recommend that the Bill, as amended, be passed.

GENERAL RECOMMENDATIONS

43. The Committee were informed that in the State Lokayukta Acts, wherever enacted, the Chief Ministers have not been brought within the jurisdiction of the Lokayuktas. The Committee feel that although the Chief Ministers of the States, keeping in view the democratic set-up in a federal structure of the country, have been proposed to be excluded from the proposed Central Legislation, as per amendment suggested in clause 2(g) of the Bill, Government might consider the feasibility of urging upon the State Governments, with a view to attaining high standards of public morality and cleanliness in public life and administration, to bring the Chief Ministers within the purview of their

respective Acts, wherever enacted so far. Where the State Governments have not, so far, enacted the said Lokayukta Acts, the Government might consider the desirability of impressing upon the State Governments concerned the importance and urgency of enacting similar legislation. It is the Committee's fervent hope that the example set at the Centre would be followed by the States.

44. During the course of discussion on some of the controversial provisions of the Bill, the Committee were confronted with a question whether the top-ranking Civil Servants, viz. Secretaries, Additional Secretaries, Joint Secretaries and the Directors, who are alleged to be hand in glove with the public men at higher political levels and who are instruments in the hands of higher echelons of political power and enjoy a special position by virtue of the powers they possess in the hierarchy of administration, could be brought within the purview of the Bill. The Committee are of the view that since the proposed Bill provided only for enquiries into allegations of misconduct against 'public men' and of corruption at 'higher political levels', to suggest such an amendment to the provisions of the proposed Bill would go beyond the scope of the Bill.

However, the Committee are of the opinion that Government, in the light of the experiences gained during the working of the present provisions of the proposed legislation after its enactment, might examine if it was necessary in the interests of the main object of the Bill to bring forward an amending Bill at a later stage to cover such civil servants.

SHYAMNANDAN MISHRA,

New Delhi; July 15, 1978. Asadha 24, 1900 (S). Chairman,
Joint Committee.

MINUTES OF DISSENT

Ι

I wish the introductory words of the Report of the Joint Committee, to which I am appending Note of Dissent, reflected the Committee's experience which was both instructive and exciting. Perhaps, the style that we have developed for prefacing the Reports of such Joint Committees made it difficult for the Chairman of our committee to do so, notwithstanding all his scintillating open-mindedness as well as his own sustaining contribution to the Committee's deliberations which were meaningful and constructive, and for which my colleagues belonging both to the ruling party and the opposition could legitimately claim credit.

Indeed the Lokpal Bill, 1977 as introduced in the Lok Sabha in July last year faced a heavy weather in the Joint Committee and it survived the stormy debates only because a number of important changes in its provisions were made. Thanks to the collective efforts of the Members of Joint Committee, the Bill has been given some sort of a fact-lift, and is now being returned to the House in a better form, shorn of some of its ugly features which bore the imprint of bureaucratic woodenheadedness stamped with the political authority of the Union Home Minister and the government. However, for all the changes the original Bill has undergone in the Joint Committee, the modified version cannot, I am afraid, still be regarded as satisfactory in point of principle or even from practical considerations.

Understandably, the original Bill, with its ill-conceived, ill-formulated clauses, gave rise to sharp controversies in the Country but these, fortunately, centered round some questions of principles, and practical approaches, and our colleagues in the Committee striving hard, as it were, had to make the best of a bad bargain. The Government was put on the defensive all along the line and left with no option but to try some rear guard actions. It had to yield much ground in the face of strong criticisms and equally irresistible constructive proposals for amendments.

In this connection I cannot but express my regret and surprise at the remark of the Prime Minister in the Lok Sabha on February 20, 1978, when he unauthorisedly sought to explain the delay in submitting the report of the Joint Committee to the House by saying: "I would like to say it is only the Select Committee Members who do not want the M.Ps. to be included." This was an improper intervention on the part of the Prime Minister which put the stand of members of the Joint Committee in the wrong light. Their stand represented that of many others not of themselves alone and involved certain questions of principles, not the promptings of selfishness. That was the reason for the delay. The aspersion was uncalled for.

With these preliminary observations let me now state the reasons which have compelled me to write this dissenting note, much as I would have liked to avoid it. I propose, however, to concentrate only on some main points of my dissent, not on, however, minor details. My very first

and serious objection to the present Bill is that it has reversed in some vital respects the earlier accepted understanding that prompted introduction of the Lokpal and Lokayukta Bill in 1968 which, however, lapsed with the dissolution of the fourth Lok Sabha but was reintroduced again in the fifth Lok Sabha in 1971 after the mid-term poll. It brings no credit to our Parliamentary institutions that for the second time the Bill had to lapse with the dissolution of the Lok Sabha. The responsibility of this, however, rests entirely with the previous government.

One would have expected that the Janata Government would stick to the broad consensus behind the earlier two identical Bills and improve their provisions. But the present government has instead chosen to defy not only the consensus but even recommendations of the interim report of the Administrative Reforms Committee submitted in October, 1966. The earlier two Bills sought to give effect to these recommendations, though not quite fully. The Bill of 1968 was, in fact, examined by a Joint Committee and later passed by the Lok Sabha but not by the other House where it was pending and could not survive due to the dissolution as has been said, of the fifth Lok Sabha. In the present Bill the scheme of the earlier Bills stands altered.

Along with the ministers the secretaries and other officials were also brought within the purview of the Bill and the jurisdiction of the Lokpal; incidentally the A.R.C. had recommended the inclusion of the officials even in the States. The Bill of 1977 has altogether excluded the officials but included at the same time within the purview of the measure the Members of Parliament, as if they are a main source of corruption, not the top bureaucracy. The A.R.C. and the earlier two Bills sought to provide a statutory machinery to inquire into complaints based on actions of all Union Public servants, including Ministers." To the A.R.C. "the main problem" was one of "corruption at higher levels" but the present Bill has significantly inserted the word "political" between the words "higher" and "levels" obviously with a view to exempting the high officials and other public servants. The top bureaucracy has every reason to be happy at this gesture shown to them by the Janata Government. It looks as though the bureaucratic top brass has now taken a revenge on the Members of Parliament for their having dared propose that the officialdom be made a major target of investigation by the Lokpal and Lokyuktas under the old, lapsed Bills. I record my strong protest against this appeasement of the bureaucracy.

This calls for investigation. We must unravel the mystery behind the exclusion of the public servants. Even the Joint Committee could not help expressing the opinion that the government might examine in the interest of the main object of the Bill the proposal "to bring forward an amending Bill at a later stage to cover such civil servants." I wish the Joint Committee had condemned here and now the exclusion of the civil servants from the purview of this Bill. I do not agree that the Joint Committee could not widen the scope of the Bill to include the officials.

When I insist on such inclusion of the bureaucrats, as originally envisaged before the advent of the Janata Government, I am by no means suggesting that the Members of Parliament who are guilty of corrupt practices or misconduct should not be sternly dealt with. In fact, it is

utterly disgraceful for any Member of Parliament to misuse his or her privilege and position for selfish ends, for securing pecuniary or other material benefits. Such behaviour would call for the most pitiless exposure as well as deterrent punishment. I submit the provision for recall of the unworthy legislators would be a salutary step.

In my view, however, Parliament itself should provide for an effective and appropriate machinery to deal with such wayward, self-seeking legislators. This is done in other countries by the House itself to which the guilty legislators happen to belong. We can certainly consider suitable amendments to the Constitution, if necessary, as well as to the rules for the conduct of the business and procedure of the House to deal with the problem instead of bringing into the picture the Lokpal, who will, after all, be an appointee of the government whatever may be the formalities and consultations in making such an appointment. The Lokpal is not expected to be a guardian angel to look after the morals of our legislators. Anyhow, I do not entertain any such illusion.

However, the task of ensuring probity among their members had better be left to Parliament and other legislative bodies. That would be more in consonance with the dignity of the representative, popular democratic institutions. In no other country in the world are Members of a sovereign Parliament subjected to such jurisdiction of a third party as is proposed in the present Bill. The new arrangement is sure to adversely affect in fact at least, if not in law, Article 105 of the Constitution.

Monopolists and other vested interests as well as officials and ministers will not fail to use, directly or indirectly, the Damocles' sword of the Lokpal to intimidate, silence or otherwise fetter the Members of Parliament in exposing corruption and fighting the corrupt. They may or may not always succeed in such wickedness but why should we at all willingly offer them an opportunity to do so?

The problem of India's Parliament is not that it has become a massive rendezvous of the corrupt legislators, rather the problem is that Parliament has not shown enough vigilance and fighting ardour in dealing with the corrupt ministers and high officials.

In any case, Members of Parliament are not immune from the existing laws of the land including the Prevention of Corruption Act. They can be easily hauled up before the Courts. But insofar as their conduct as legislators as such is concerned this should be left to the House to which they belong to be dealt with. This is a matter of principle pertaining to the ground rules of a parliamentary democracy. Any default on this score can scarcely be overcome by bringing in the Lokpal into the arena. A special court of inquisition is not needed for the purpose.

The inclusion of the legislators within the jurisdiction of Lokpal while excluding the officials is open to very serious objections on other grounds as well. It is a kind of defamation, may be, by implication of the entire body of our M.Ps and other legislators who are collectively made to appear as a major source of corruption in public life. Not that some of them are not liable to be corrupt or guilty of misconduct but they are usually the persons who are either accomplices of the corrupt ministers, or have close ties with them. Private Members of Parliament, having

no such connections, can do precious little in distributing contracts, licences and other favours. They have no executive powers or authority whatsoever to misuse on their own, although it is possible to gain some fringe benefits and advantages by misusing the status of a legislator even without any shady access to the corridors of power.

Numerous reports of the Inquiry Commissions stand in a row to testify to the fact that it is at the level of collusion—between the corrupt ministers and corrupt officials occasionally some—private members of legislature acting as accomplices, where the main sources of corruption in high places exist. In fact, the corrupt ministers get their dirty jobs done by this or that high official and the length to which such collusion can go has been shockingly demonstrated during the ninteen months of the internal emergency. Yet, the present Bill has chosen to give a clean chit to the high officialdom by exempting it from the jurisdiction of the Lokpal.

Moreover, the contact men of monopolists, the main promoters of corruption in public life, often operate with the help of the secretaries, additional secretaries, joint secretaries, deputy secretaries, directors and the like to influence the government and gather their ill-gotten harvest at the cost of the nation and, of course, by molesting public standards. It is not as if all high officials are corrupt; many indeed amongst them are men of personal honesty and integrity, even though their ideas and way of looking at public affairs may be retrogade and reactionary. But the dishonest and corrupt ones amongst them have wrought havoc on our public administration and indeed on our public life. Let it not be overlooked that in every major public scandal involving the administration such black-sheep among officers have figured as villains of the piece. There are various reports of even the CBI to remind us this well-organised and well-oiled source of corruption.

The CBI has also been used, as the Shah Commission has revealed, for corrupt purposes.

To leave the public servants alone and then to claim that the present Lokpal Bill is intended to combat corruption is an affront to the commonsense of our people. We reject this approach under the *allibi* of fighting corruption "at higher political levels".

Have the fund collection for elections and other political purposes been ever carried on by the party in power without the intimate and criminal involvement of some high officials? Officials very much operate at the political levels, too, but for whose expertise our corrupt ministers would fail in their evil pursuits especially in fund raising from monopolists, contractors and other vested interests. This sub rosa business is a joint enterprise of ministers and officials. By all means go after the corrupt legislators; they deserve no mercy. But why should the focus under the present Lokpal Bill be so deliberately shifted from the officials to the Members of Parliament is difficult to comprehend unless one would take into account certain ulterior political motivations behind the posture of the 1977 Lokpal Bill.

It is to be deeply regretted that our amendments for the inclusion of the officials within the purview of the Bill have not found acceptance by the Joint Committee, though many of its members have shared our stand in this regard. It is, however, hoped that before this Bill becomes the law of the land this howling gap in it will be removed by returning at least to the positions taken in the earlier two Bills. I earnestly hope that the Rajya Sabha, the House to which I have the honour to belong, will rise to the occasion and add necessary amendments to the Bill to this effect. This I am sure will mark a great day for the Rajya Sabha. I expect an understanding role, at least in moral and political terms, on the part of the Lok Sabha also.

Another serious departure of the present Bill from the standpoints of its predecessors is to be noted in the fact that it provides no machinery for the redressal of the grievances of the citizens on the basis of their complaints against injustices done to them by any action of the administration "taken by or with the approval of a minister or a secretary." The concept of Ombudsman which weighed with the A.R.C. in making its recommendations in the interim report earlier referred to has been completely rejected in the present Lokpal Bill. Yet, the redressal of such grievances and the removal of such injustices should be regarded as a very important task by the new institution which is proposed to be created by this Bill. Such an assignment would impart some democratic substance to the institution. There is a crying need for an effective machinery at the disposal of Parliament to promptly attend to popular grievances and redress them. Such an arrangement will greately check bureaucratic callousness and excesses in relation to the people.

I do not see why the appointment of the Lokpal should not be left to Parliament to be determined in the manner in which the constitutional amendments are made, that is, by a clear majority of the total members and by a majority of not less than two-thirds of the Members present in voting in each House. That will make the process of consultation for arriving at a consensus real and effective.

I do not accept the contention that the question of such appointment should not be subject to discussion in Parliament. There is no democratic logic in this negative approach in the name of ensuring the so called sanctity to the office which is proposed to be created. The outlook is a hang-over from the days of the British and we need not go on preserving it. Frankly speaking, all high offices should be subject to the vigilance and review of the people's representatives, whether in Parliament or in the State Legislatures as the case may be. Why should it be presumed that the legislators would behave irresponsibly in filling a high office? Those who are not prepared to face the public scrutiny of their character, integrity and competence hardly qualify for occupying high offices.

The provision of salary of Rs. 5000/- per mensem to the Lokpal seems to be rather too high. He is not likely to have much work. Are we to create another fat salaried office-almost a sinecure for providing some gilt-edged berth to our VIPs, probably retired ones? A public spirited man is expected to become the Lokpal and he should be satisfied with a lesser amount as his salary. If talent and competence are to be so attracted in a country where almost one half of the population live below the poverty line, what then remains of the majesty of patriotism to make its impact felt on our national affairs? The appointment of a person as the Lokpal is in itself a great honour bestowed on him which should not be defiled by the usual VIP money-grabbing.

There is no reason why all categories of public servants should not be allowed to make complaints under the proposed legislation? In fact they should be inspired and encouraged to come forward with complaints against corruption and misconduct. They have to be drawn in a big way into the fight against corruption in high places. The millions of government employees are an important source of information about corruption. We need active and cooperative vigilance.

I wish the "competent authority" in the case of the Prime Minister and other ministers as well as legislators was a Joint Committee of the two Houses of Parliament entrusted with powers to make recommendations of penalties or similar other measures to the appropriate executive authority. Our experience is that the head of the Government, whether he be the Prime Minister or a Chief Minister, tends to minimise the allegations against his ministerial colleagues. I am not, therefore, prepared to put undue reliance on the Prime Minister in regard to the cases involving the Members of the Council of Ministers. This point needs, in my view, some reconsideration. Too much burden need not be placed on the presiding officers, the Speaker of the Lok Sabha or the Chairman of the Rajya Sabha. The Members of the House may well be entrusted, in an appropriate manner, with an active role.

I would like to conclude by stressing again that what we need to confront most resolutely is corruption in high places, not merely "at higher political levels". It is often difficult to separate the corrupt minister from the collaborating bureaucrat! The struggle against such corruption can never succeed unless the money power the gongotri of all corruption—is mercilessly hounded out not only of the corridors of power but also from the affairs of political parties, the ruling party in particular. Even the recent crisis in the ruling party, in its spate of mutual recriminations, has again highlighted the real sources of corruption not to speak of the findings of the Shah Commission or for that matter that of various other inquiries held under the Commissions of Inquiry Act, 1952. have had enough of bitter and costly experience to guide us in our struggle against corruption in high places. What we need is a firm political will to go into the battle and fight it to the finish with our flaming patriotism. Graft in high places spells disaster to the nation and its future. Top bureaucracy has become a festering cesspool of corruption, thriving hand-in-glove with the corrupt at higher political levels."

BHUPESH GUPTA.

NEW DELHI;

July 12, 1978.

Asadha 21, 1900 (Saka).

II

(PART I)

The definition of misconduct in the case of a Legislator is given in clause 3(2) of the Lokpal Bill, 1977 which reads as under:—

"A Legislator commits misconduct if he abuses, or attempts to abuse, or knowingly allows to be abused, his position as such Legislator for securing for himself directly or indirectly any valuable thing or pecuniary advantage."

Evidently, this definition is incomplete because it in a way allowes a Legislator to abuse his position for securing for his relatives or associates any valuable thing or pecuniary advantage. To give a concrete example, suppose a person goes to a Legislator for getting his passport application verified and the son or any other relative or friend of the Legislator wants and is given a valuable thing for getting the work done and the Legislator not only knows it but allows the same. Even then according to the present definition it will not be treated as a misconduct on the part of that Legislator because it cannot be said that the Legislator got any valuable thing for himself.

If the present definition is allowed to remain then the whole purpose and spirit of the Act so far as a Legislator is concerned, will be frustrated,

It is therefore suggested that the words "or for any of his relatives or associates" be added after the word "himself" appearing in the third line of clause 3(2). Thereafter this sub-clause would read as under:—

"(2) A Legislator commits misconduct if he abuses, or attempts to abuse, or knowingly allows to be abused his position as such Legislator for securing for himself or for any of his relatives or associates directly or indirectly any valuable thing or pecuniary advantage,"

R. D. GATTANI

New Delhi; July 15, 1978. Asadha 24, 1900 (S).

(PART II)

While the Bill was under consideration of the Joint Committee, an effort was made to amend Clause 21(1) and Clause 22(2) of the Bill so that the Lokpal might punish contempts committed by a person in his work. However, the Committee were informed that it could not be done as the Lokpal cannot be termed as a Court or that the proceedings before it cannot be called a judicial proceedings. Reliance in this connection was placed upon Ram Krishan Dalmia Vs. Justice Tendolkar reported in A.I.R. 1958 Supreme Court, page 538 and 24th Report of the Law Commission of India, pages 8 and 9. Both the authorities were dealing with provisions of the Commissions of Inquiry Act, 1952. Their Lordships of the Supreme Court have at one place observed:—

"The Commission has no power of adjudication in the sense of passing an order which can be enforced proprio vigore.

A clear distinction must, on the authorities, be drawn between a decision which, by itself, has no force and no penal effect and a decision which becomes enforceable immediately or which may become enforceable by some action being taken. Therefore, as the Commission we are concerned with is merely to investigate and record its findings and recommendations without having any power to enforce them, the inquiry or report cannot be looked upon as a judicial inquiry in the sense of its being an exercise of judicial function properly so called....."

The Law Commission in their said report, after taking recourse to Article 19 of the Constitution have observed that the Commission cannot be called a Court.

At this stage I may mention about the necessity of giving power to the Lokpal for punishing the contempts. The importance of the Lokpal and his functions cannot be underestimated. He will be inquiring into the alleged misconducts of the Members of Parliament and that of the Union Cabinet as well besides some other persons. It is just possible that in the course of discharging his functions he might be subjected to most uncharitable attacks in the Press and elsewhere and to meet such exigencies provisions have been made in Sub-clause (2) of clause 21 of the Bill.

But there can be actual interruption in his work by say sounding of conches or cymbals or by uttering nonsense in loud tone making him impossible to work. What is he to do in such circumstances? As the Bill at present provides a complaint about the incident may be got lodged through Public Prosecutor in appropriate court for offence under clause 21(1) of the Bill. But that itself will take some time and meanwhile if the interruption or the disturbance continues, the Lokpal may close his work and go home or sit idle enjoying the disturbance. This certainly cannot be the intention of any good law. A way must be found out whereby the Lokpal may discharge his function peacefully and without any interruption.

Clause 15 of the Bill lays down that the Lokpal shall have all the powers of a civil court in respect of the matters mentioned in part (b) of Sub-clause (1) of that clause. At the same time sub-clause (3) of clause 16 provides that the provisions of the Code of Criminal Procedure. 1973 relating to searches shall, so far as may be, apply to searches under this clause subject to the modification that sub-section(5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the words "Lokpal or any officer authorised by him" were substituted. Then again, clause 22 of the Bill gives power to the Lokpal to try certain offences summarily. Inspite of all these provisions the fact remains that the Lokpal, as the Bill stands today, cannot be technically termed as a court nor the proceedings before the Lokpal of inquiring into the alleged misconducts of M Ps etc. can be technically called as judicial proceedings. If, therefore, the Lokpal is to have power to punish for offences under section 228, IPC, i.e. for insult to him or interruption in

his work, a provision will have to be made that the proceedings before the Lokpal shall be deemed to be judicial proceedings. In cases of the present type one has to take recourse to legal fiction. At times in order to obviate technical difficulties, we have to take recourse to deeming provisions of law. Section 43A of the Companies Act may be cited as one such example.

The following amendments, therefore, are proposed in the Bill so as to achieve the above-mentioned object: -

- (i) Sub-clause (1) of clause 21 be substituted as follows:
- "The proceedings before the Lokpal for the purposes of Section 228, Indian Penal Code shall be deemed to be a judicial proceeding"
- (ii) For the words and figures "in section 175, section 178, section 179 or section 180 of the Indian Penal Code" appearing in lines 1 and 2 of sub-clause 2 of clause 22 may be substituted by "in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code".

If these amendments are allowed to, the Lokpal shall be in a position to punish intentional insults to him or interruptions in his work then and there. Otherwise, mockery of law might be repeated again and again just as it appeared before the Commission headed by Justice Shah a few days back.

R. D. GATTANI

NEW DELHI;

July 18, 1978. Asadha 27, 1900 (Saka),

Hí

The definition of 'misconduct' in clause 3(1) is, in my opinion, a piece of clumsy draftsmanship and in no sense an improvement on the one contained in the Bill as introduced. Parts (a) and (b) are fully covered by Part (c). The latter refers to 'corruption' which under clause 2(d) includes the entire offence of criminal misconduct in the discharge of official duty as described in Section 5 of the Prevention of Corruption Act, 1947. The section reads as under:—

"5, Criminal misconduct in discharge of official duty,

- (1) A public servant is said to commit the offence of criminal misconduct:—
 - (a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person, any gratification (other than legal remuneration) as a motive or reward such as is mentioned in section 161 of the Indian Penal Code, or
 - (b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, or
 - (c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or ellows any other person so to do, or
 - (d) if he, by corrupt or illegal means or by otherwise abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage, or
 - (e) if he, or any person on his behalf is in possession of or has, at any time during the period of his office, been in possession, for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income."
- 2. It is difficult to imagine a case which is not covered by this definition but is intended to be caught by clauses 3(1)(a) and 3(1)(b). I have repeatedly asked this question and I have never succeeded in getting an answer. I myself cannot conceive any. It is elementary that all redundant surplusage in a statute must be avoided. I feel that the definition will create endless controvercies including litigation.

- 3. The original definition in Part (d) contained the following:—
 - "(d) if he fails to act in any case otherwise than in accordance with the norms of integrity and conduct which ought to be followed by the class of public men to which he belongs;"

Despite its somewhat inartistic phraseology, the Part was absolutely essential and has been dropped for a wholly inadequate reason. It is said that it is vague and imprecise. In my opinion, this is wholly wrong. Provisions of this character have been found workable even in strict criminal proceedings. Section 45 of the Army Act 1950 makes any unbecoming conduct on the part of an officer as punishable offence. 'Unbecoming conduct' is defined as behaving in a manner unbecoming of his position and the character expected of him. The whole of army discipline has been based upon this very crucial cardinal provision.

- 4. Rules of professional conduct and etiquette for lawyers under the Advocates Act 1961 while making specific provisions have a general provision that a lawyer is expected to conform to the standards of conduct expected of a gentleman. Lawyers have been disbarred or otherwise punished for failing to conform to this wholesome though no less imprecise standard than the one in the clause in question. In my opinion, with a few verbal changes the clause ought to be restored. In the inductive manner of English Common Law, the Lokpal will be able to build precedent by precedent and an unwritten code of conduct for public persons whether mere legislators or legislators who have taken on ministerial responsibilities. I, therefore, recommend that instead of the present clause, the following should be substituted:—
 - "(c) 'Corruption' means and includes-
 - (i) any act punishable under Chapter IX of the Indian Penal Code or the Prevention of Corruption Act, 1947;
 - (ii) abetment of any of the acts mentioned in sub-clause (i) of clause 2(c);
 - (iii) intentional concealment of acts mentioned in sub-clauses (i) and (ii) of clause 2(c) by any other public person; and
 - (iv) any conduct which in the opinion of the Lokpal does not conform to the standards of fairness or integrity reasonably expected of the public person concerned in his character as a public person.
 - Explanation.—Acts or conduct amounting to corruption shall be such whether committed before or after the coming into force of this Act."
- 5. Incidentally, I prefer the word 'corruption' to the word 'misconduct.' It is more incisive and meaningful. If this is adopted, clause 2(d) would be redundant and the word 'corruption' shall have to be substituted in place of the word 'misconduct' wherever it occurs.
- 6. I am against the use of the expression 'public man' in the Act. Its feminine gender 'public woman' has a connotation of an entirely different kind. The expression 'public person' is more appropriate.
- 7. Members of Parliament ought to be fully covered by the Act. Since a legislator does not perform any executive function, the defi-

nition of 'corruption' would necessarily have a restricted application to him. The present clause 3(2) while seeming to make a distinction between legislators and other public men really does not create any practical difference in the working of the Act. It is unnecessarily clumsy and redundant. It creates a misleading impression in the public mind that Members of legislature being collectively the law-making authority are unwilling to subject themselves to the wholesome restraints of the Act. I am of the opinion that no provision in the Act is likely to deter a legislator from doing his duty to his electorate or to the Parliament.

8. Except for these vital points, I concur in the Report of the Joint Committee.

New Deini;

July 15, 1978.

Asadha 24, 1900 (S).

RAM JETHMALANI

IV

The Joint Committee have recommended for making special provisions for legislators. For them, a separate definition of misconduct has been provided, a special procedure for dealing with the complaints against them has been suggested as also for holding of the inquiry against a legislator in camera. The Joint Committee have further provided for penalty for disclosure or publication of information in respect of complaints against legislators. No doubt the legislators should not be inhibited in the fearless and proper discharge of their duties. But to our mind, it would not be proper to limit the scope of an inquiry or to evolve a special procedure in respect of a complaint against a legislator. We are particularly strongly opposed to the special definition of misconduct with regard to the legislators. In our view the definition proposed by the Joint Committee will greatly, if not wholly, inhibit holding an inquiry even in respect of genuine complaints of misconduct against a legislator. It is provided in Clause 3(2) of the Bill, as recommended by the Joint Committee, that only in case where the legislator secures for himself directly or indirectly any valuable thing or pecuniary advantage by abuse of his position as legislator, a legislator commits misconduct. There is no reason why securing advantage for relatives or associates of a legislator or any act or omission by a legislator which constitutes corruption should not be held to be a misconduct on the part of a legislator. It is no good ignoring the fact that there are serious complaints against the conduct of various legislators. No impression even remotely should be given that the legislators wish to shirk any inquiry against them. The Bill provides for taking strong action in case of false complaints and that will deter mischievous and baseless complaints. We do not, in the circumstances, see any reason why the legislators should be given separate and favoured treatment and as such we are opposed to such recommendation of the Joint Committee as are applicable specially to the legislators. Further, if the legislators provide for special favoured treatment for themselves, it will cause greater harm to their image and will invite public criticism.

The Chief Ministers of the States have been taken out of the purview of the Bill on the ground that their inclusion would not be in accordance with democratic set-up in a federal structure of the country. But one should take note of the fact that in various State Legislations, no provision has been made for inquiry into any allegation of misconduct against the Chief Minister. What was felt was that to avoid the possibility of any State Government not enacting suitable legislation applicable to the Chief Minister also, the Central Legislation may provide for setting up of similar authority as the Lokpal whose appointment will be by a different procedure with a different competent authority and it should not be left to the good wishes of the States themselves. However, since the Joint Committee have expressed their hope that an example set up by the Centre would be followed by the State, we do not wish to take our difference with the recommendation for excluding the Chief Ministers from the purview of the Bill to the point of dissent.

> SOMNATH CHATTERJEE SASANKASEKHAR SANYAL

New Delhi;
July 17, 1978.

Asadha 26, 1900 (Saka).

7

The Administrative Reforms Commission of which the Prime Minister was the first Chairman, and myself a Member submitted to the Government in October, 1966 its interim report on the subject of redress of citizens' grievances.

Para 37 thereof reads as follows:-

"We have carefully considered whether the institution of Lokpal will require any Constitutional amendment and whether it is possible for the office of the Lokpal to be set up by Central legislation so as to cover both the Central and State functionaries concerned. We agree that, for the Lokpal to be fully effective and for him to acquire power without conflict with the other functionaries under the Constitution, it would be necessary to give a Constitutional status to his office, his powers, functions, etc. We feel, however, that it is not necessary for Government to wait for this to materialise before setting up the office. The Lokpal, we are confident, would be able to function in a large number of cases without the definition of his position under the Constitution. The Constitutional amendment and any consequential modification of the relevant statute can follow. In the meantime Government can ensure that the Lokpal or Lokayukta is appointed and take preparatory action to set up his office, to lay down his procedures, etc., and commence his work to such an extent as he can without the Constitutional provision. We are confident that the necessary support will be forthcoming from Parliament."

According to the draft report adopted by the Joint Committee, sub-Clause (2) of Clause 2 of the Lokpal Bill, 1977 as reported by the Committee, provides that the Speaker of the House of the People will be the competent authority in cases where the complaint is against the Prime Minister. I am of the view that the competent authority in the case of a complaint against the Prime Minister should be the President acting in his individual judgment. As stated above, according to para 37 of the ARC report, the Constitution may be amended, if necessary, for the proper and efficient functioning of the Lokpal. The President, as envisaged in the Constitution, is empowered to act only on the advice of the Council of Ministers, but I feel that in so far as complaints of misconduct against the Prime Minister are concerned, the President acting in his individual judgment, and not the Speaker of the Lok Sabha, should be competent authority within the meaning of sub-clause (2) of Clause 2 of the Lokpal Bill, as amended by the Joint Committee.

There are two reasons why it should be so. First, it would be awkward and embarrassing for the Speaker, whose role in relation to the House is more of a judicial character than any other, and who has to, therefore, function without getting involved in political or quasi-political controversies affecting the leader of Government, to be designated as the competent authority in the case of complaints against the Prime Minister. Secondly, what appears to me to be even more important, is that an amendment of the Constitution, in order to deal with complaints against the Prime Minister, will have a tremendous phychological impact on the minds of people, because such a move will convince them that Parliament means business, and is most anxious to ensure that complaints against even the Prime Minister who was, contrary to the recommendation of the ARC, excluded from the purview of the Lokpal in the Bill introduced in the Lok Sabha during Shrimati Indira Gandhi's regime, will be dealt with properly and effectively.

On a similar reasoning, I am inclined to the view that where the complaint is against the Speaker, the competent authority should be, not the Deputy Speaker, but the President of India acting in his individual judgment.

Sub-clause (5) of Clause 17 of the Lokpal Bill, as reported by the Joint Committee, provides that the President shall cause the special report of the Lokpal together with an explanatory memorandum to be laid before each House of Parliament not later than ninety days from the receipt of the report, but it is somewhat strange that the explanation to sub-clause (5) provides that in computing the period of ninety days, any period during which Parliament, or as the case may be, either House of Parliament is not in Session, shall be excluded. This provision may, in effect, mean that the laying before Parliament, of such a report of the Lokpal, presented say, in June of any particular year may be delayed till the next year's Budget Session, because it very often happens that the Monsoon Session and the subsequent Winter Session of Parliament do not together make a total of ninety-days as required by this provision I would, therefore, suggest that the period should be 100 days, or at the most 120 days, from the receipt of the report, including the period when Parliament is not in Session. It would be useful and relevant to recall, in this connection, the provision, in the Commissions of Inquiry Act, 1952, which requires the Government to lay before Parliament the report of a Commission of Inquiry within six months of its submission to Government, irrespective of whether the Parliament is in Session or not. In my opinion the Lokpal's special report is of greater importance than

that of a Commission of Inquiry, and Parliament would, therefore, be justified in providing for a much shorter period in this case than in the case of the report of a Commission of Inquiry.

It may be noted that according to Clause 2(1) (d) "corruption" includes anything made punishable under Chapter IX of the Indian Penal Code or under the Prevention of Corruption Act, 1947. As the Bill seeks to make provision for inquiries into allegations of misconduct against public men and for matters connected therewith, and inasmuch as "misconduct" has been comprehensively defined in Clause 3 of the Bill, it is a matter for consideration whether in Clause 2(1)(d), the word "means" should be substituted for the word "includes". It may be noted that in Clause 2(1)(f), the word "means" and not the word "includes" has been used in respect of "misconduct", and a similar change may perhaps be made with regard to "corruption" in Clause 2(1)(d) of the Bill-

HARI VISHNU KAMATH

NEW DELHI;

Dated the 17th July, 1978

Asadha 26, 1900 (Saka).

VI

I have gone through the draft report of the Joint Committee and the proposed Bill, as amended by the Committee. This Bill and the Report were considered by the Committee at its sitting on 12-7-1978. I am of the opinion that there is no justification to include Members of Legislative Assembly for a Union territory, Members of the Executive Council, Mayor of Municipal Corporation etc. in the definition of "Public man" in this Bill, particularly when it was decided to exclude the category of Chief Minister of a State from the purview of this Bill. This exclusion is mainly on the basis of the fact that various State Legislatures have powers under the Constitution to frame similar Acts and to include the category of the Chief Minister. In fact, at present there are Lokayukta Acts passed by various State Legislatures, such as—

- The Orissa Lokpal and Lokayuktas Act, 1970.
- 2. The Maharashtra Lokayukta and Up-Lokayukta Act, 1971.
- The Bihar Lokayukta Act, 1973.
- 4. The Rajasthan Lokayukta and Up-Lokayukta Act, 1973.
- 5. The Uttar Pradesh Lokayukta and Up-Lokayukta Act, 1975.

These acts cover the Ministers and other persons.

It is, therefore, necessary to exclude this category of Assembly Members and others for which Union territory Legislatures can pass enactments similar to Lokayukta Acts. I regret that the suggestion was not accepted. I, therefore, suggest that these categories be deleted from the definition of 'Public man' in this Bill.

In fact, it is essential to keep this Central Legislation restricted only to the Union Ministers and Secretaries and other officers and servants of the Central Government.

I may also add that as the Bill is designated as Lokpal Bill, the word "Public man" may also be substituted by the word "Lok Pratinidhi."

In the light of the facts stated above, it is not possible for me to agree with the report to the extent stated above about inclusion of categories in the definition of 'Public man' for which the other Legislative Bodies can pass legislations.

NEW DELHI;

S. W. DHABE

July 18, 1978. Asadha 27, 1900 (Saka).

VII

The provision to punish the complainant with the fine and imprisonment if his/her allegation turned to be false is not desirable and it would thoroughly discourage anybody to think of exposing corruption of public man. Forfeiture of deposit amount of Rs. 1,000 is enough to deter frivolous and false allegations because even a candidate for Parliament election is after all required to make a deposit of Rs. 500 only. So provision for compulsory imprisonment coupled with fine for false complaint might have been avoided.

V. V. SWAMINATHAN

Chidambaram,
Tamil Nadu;
July 16, 1978.
Asadha 25, 1900 (Saka).

VIII

We have very carefully gone through the draft Report of the Joint Committee and the proposed Bill as amended by the Committee annexed to the Report. While we fully appreciate and accept many of the amendments, suggested by the Committee in the Bill we are constrained to say that there are considerable areas and a number of provisions with which we find it difficult to agree because they affect adversely some of the basic principles which are very essential for the successful working of democracy and democratic institutions in this country.

We regret to find that the Bill makes no attempt at all to create an institution comparable to the Ombudsman in Scandinavian countries or the Parliamentary Commissioner in United Kingdom and Australia. The genesis of the Bill can be traced to the discussion which took place in Lok Sabha in April, 1964. Subsequently the Administrative Reforms Commission, 1966 headed by the present Prime Minister Shri Morarji Desai also accepted and recommended the adoption of the concept of "grievance man". The Bills of 1968 and 1971 had very largely embodied these recommendations. The present Bill gives a go by to the concept of Ombudsman and converts the Lokpal into a forum do investigate allegations against public men. Corruption no doubt is a very serious problem. But malfeasance and misfeasance by Executive authority is no less serious and they affect and harass the common man. Our difficulty also

arises from the fact that even though there was large volume of opinion transcending party demarcations and differences which was contrary to what is expressed in the Report and contained in the Bill, that spectrum of opinion is not reflected in the amended Bill or has found a mention in the draft Report. The issues which we consider most serious are mentioned below:—

Retrospective Operation-Ex-post-facto penal legislation

Clause 2(1)(f) states: "misconduct means misconduct (whether committed before or after the commencement of this Act or within or outside India) of the nature specified in clause 3". Clause 11(3) states that the Lokpal shall not inquire into any allegation of misconduct after the expiry of five years from the date on which the misconduct is committed. Reading these provisions together it is clear that the Bill has retrospective effect covering roughly a period of five years, that is to say offences committed during a period of around five years previous to the commencement of the Act are brought within the ambit of the Bill. Bill, therefore, purports to make acts or omissions, which were not illegal at the time they were committed illegal and penal. This is abhorrent to the concept of the prohibition against ex-post-facto penal legislation accepted at least from the time of Coke's Institutes and enshrined in the jurisprudence and constitutions of all civilized nations and solemnly incorporated in Article 20(1) of our Constitution which states: "No person shall be convicted of any offence except for a violation of law in force at the time of the Commission of the act charged as an offence nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence." The Supreme Court as well as all the High Courts in this country have unequivocally disapproved by a catena of decisions ex-post-facto penal legislations.

A large number of members during the deliberations of the Committee as well as through a number of amendments forwarded to the Committee have strongly opposed the introduction of this retrospective penal provision. It is unfortunate that such a serious objection is not even taken note of in the Report or in the draft Bill. The argument that there is no new offence created by the proposed Bill or that no penalties are prescribed in the Bill is not convincing or has no merit or substance. It may be noted that the definition of corruption in clause 2(1) (d) is only an inclusive definition, that is to say, the expression corruption in the Bill includes anything made punishable under Chapter IX of the I.P.C. or under the Prevention of Corruption Act, 1947. The expression inclusive necessarily means that what is contemplated as corruption in the Bill is wider than the concept of corruption in any of the two enactments mentioned. Further, clause 3(2) states that "A Legislator commits misconduct if he abuses, or attempts to abuse, or knowingly allows to be abused, his position as such legislator for securing for himself directly or indirectly any valuable thing or pecuniary advantage." It is crystal clear that new offences are created by the above provisions which are far beyond the scope and ambit of The Indian Penal Code, The Prevention of Corruption Act or any other existing law. Under clause 17(2) and (3) certain actions are contemplated in pursuance of the Report of the Lokpal. These actions are necessarily to be in the nature of some kind of punishment in one shape or the other in case the Lokpal gives findings adverse to the Legislator concerned. It is true that no imprisonment or imposition of fine is specifically mentioned in the Bill, but if in pursuance of the Report and recommendations of the Lokpal a Legislator is made subject to any kind of penalty whether it may be a mere censure by the competent authority will amount to in spirit and substance to a punishment for the Legislator. Any action on the part of the Competent Authority which may amount to even casting of a blemish on his reputation or a doubt about his integrity and probity will be a punishment. It is banal and ignoring of realities to say in the circumstances that there is no penalty prescribed or no new offence is created on the basis of mere technical and legalistic arguments. In these circumstances we have no option but to express our dissent from the Report in this regard and the relevant provisions of the Bill referred to above.

Inclusion of Legislators within the purview of the Bill

There was a considerable body of opinion among the members of the Committee irrespective of party affiliations that the Legislators should not be included within the ambit and scope of the Bill for a variety of cogent and sound reasons. We wish to point out some of them. In no democratic country, Legislators are subject to a similar law. generally contemplated is to provide redress against the misfeasance or non-feasance of executive authorities. The Report itself concedes that the Legislators have no executive power in any sense of the term. Legislator, apart from the provisions of penal legislation relating to corruption to which every citizen is subjected to, is answerable for his actions to the law of Parliamentary Privileges under Article 105 of the Constitution, to the disciplinary bodies of his party and to the greatest of all tribunals, namely, the electorate of his constituency and public opinion. Further by reason of the provisions contained in the proposed Bill, he will be effectively deterred from discharging his duties as a Legislator because influential vested interests, lobbies and individuals against whom he raises issues in the Parliament can always harass him and even destroy his public image and career by taking easy recourse to the relevant provisions of the Bill. The very existence of this possibility will always hang as a Democles Sword over the head of every Legislator which reason alone is weighty enough to exclude the Legislators from the purview of the Bill. We are of the view that allegations against Legislators could be more properly dealt with by a Committee of Parliament on the basis of a Code of Conduct to be evolved by agreement between political parties. Any allegation of misconduct or violation of professional ethics by an Advocate or a Doctor is dealt with by the Bar Council or the Medical Council as the case may be. The American Senate has also recently proposed a Code of Ethics for its members. We see no reason why a similar code of conduct should not be evolved for Legislators and any allegation against them should be dealt with by the House to which he belongs rather than by an external authority like a Lokpal. Lokpal

There was almost a consensus that sitting or retired Judges of the High Courts or the Supreme Court shall not be qualified to be appointed as the Lokp'al. Without elaborating the matter it will suffice to say that most of the Members felt in unison with the recommendations of the Law Commission headed by the late and revered Shri M. C. Setalvad, former Attorney General of India, that sitting or retired Judges shall not

accept or be offered such appointments. The reason is that the executive can always dangle such juicy posts as carrots before such Judges which in principle and effect is likely to undermine judicial independence. We regret to say that this fundamental and salutary principle which was suggested and pressed strongly by a large number of Members does not find a place either in the Report or in clause 5 of the Bill.

A large number of Members suggested that instead of one Lokpal there should be three Lokpals. The idea was not merely to increase the number. It contained a very desirable and sound principle based on practical experience as well. On examination of the constitution of Benches, either in the High Courts or the Supreme Court, or of important Tribunals deciding substantial issues it is found that generally there will be more than one Judge or Member. There may be a Division Bench of two and full Bench of three and in more important matters the full court sits to adjudicate such issues. It is true that many important cases are decided by a single Judge in a number of Courts in India. However it is important to remember that in almost every case there is a right of appeal and a decision of a Single Judge is subject to an appeal to a larger Bench. The right of appeal'is an assurance to the citizen that possible predilection or prejudice of one Judge can be corrected by an appeal to a higher court. It may also be pointed out in this connection that in recent years there is a growing tendency in Europe to constitute collegiate forums from lowest level and thus eliminate the possibility of prejudice or predilection of a single Judge.

Apart from the commonsense idea, "two heads are better than one", the suggested panel of three Lokpals bestows more dignity to the forum and creates a greater assurance of justice and fairplay in the mind of the person who is hauled up before the Lokpal under the provisions of the proposed law. It goes without saying that justice shall not only be done but must also appear to have been done.

In the above circumstances we find it hard to agree with the Report to the extent that it has not found it necessary to accept the above suggestions or even to mention this strong body of opinion.

In conclusion, we wish to add that the sole reason for submitting this note of dissent is our deep anxiety that fundamental principles and concepts and values of Parliamentary Democracy shall not be lost sight of by political expediency or sheer default.

New Delhi; July 17, 1978. Asadha 26, 1900 (Saka).

V. A. SEYID MUHAMMAD
SAUGATA ROY
M. V. KRISHANNAPPA
NATHU RAM MIRDHA
A. R. ANTULAY
K. SURYANARAYANA
BIPINPAL DAS
DEVENDRA NATH DWIVEDI
MARGARET ALVA
S. W. DHABE
N. G. RANGA
SAWAISINGH SISODIA
BALASAHEB VIKHE PATIL

C. M. STEPHEN

IX

While I am in full agreement with the broad objectives of the Lokpal Bill, 1977 providing for the appointment of a Lokpal to enquire into the allegations of misconduct against public men and for matters connected therewith, I am not equally convinced that the scheme embodied in the Bill is such that it will realize the objectives of the Bill. The structure of the statutory machinery that is provided in the Bill is of such nature that it may perhaps defeat the very purposes of the Bill. At any rate, the main objectives of the Bill may not be achieved and the statutory machinery, by its very nature, may probably be so worked out as to show some minor results.

- 2. To appreciate properly the above mentioned contention, it will be appropriate to have briefly a comparative picture of similar enactments in other countries of the world, with the broad provisions of this Bill. The history of this Parliamentary Institution called *Ombudsman* (which is equivalent of Lokpal) dates as far back as 1713; and during all these years this Institution has been developed in such a comprehensive manner, that almost all possible centres of injustice are fully plugged. Thus in the Swedish enactment even the judicial affairs as well as military affairs are brought within the jurisdiction of *Ombudsman* there. Similar law of Denmark covers entire civil Administration as well as military administration. Law of New Zcaland covers all administrative decisions as well as acts of Departments of State. In U.S.S.R. such law covers even judicial aberrations. In Great Britain such law covers all acts of maladministration.
- 3. As contrasted to these enactments it will be clear that the present Bill is confined to the aspect of misconduct by the public man leaving all other centres of injustice, misconduct or corruption, of maladministration of civil, military or judicial affairs.
- 4. It is a common knowledge that the origin of the previous Lokpal and Lokayukt Bill, 1968 which lapsed because Fourth Lok Sabha was dissolved and the origin of the present Lokpal Bill, 1977 as well is to be found in the recommendations in the interim report of the Administrative Reforms Commission headed by Shri Morarji Desai (Now Hon'ble Prime Minister) which was submitted on 28th October, 1966. The main problem that confronted the Administrative Reforms Commission was about the redress of grievances of the citizens, particularly in cases where "there is virtually no statutory remedy open to a citizen against any final administrative order". The Commission had stated that "such order may be open to question either on the ground of misuse or abuse of power or on the ground of having a influence by ulterior motives or extraneous considerations or as a result of error of judgment, negligent, inefficiency or even perversity". The Commission had also stated in its interim report that "Parliamentary supervision by itself cannot fully ensure to the citizens that rectitude over the entire area covered by administrative discretion. The Administrative Reforms had, therefore, recommended appointment of Lokpal for these purposes set out in the report. But the main objective of those recommendations is given a complete go by. This is 'volte facie' of the Government intention.

- 5. Not only that but under provisions of sub-clause (2) of Clause 10, it has been left to the Lokpal to consider or not to consider, to inquire into any act or conduct of any person other than public men. It means statutorily he is not bound to enquire into any act of misconduct of any Government servant or other categories of persons, at all. Because of this glaring omission and confining enquiry into the alleged misconduct of public men alone may result in not discovering the truth and achieving the main objective of the Bill.
- 6. I am of the firm opinion that unless provisions for redress against maladministration in civil, judicial and military affairs are not simultaneously made in this Bill, the main purpose of the Bill may not be achieved at all.
- 7. The next hurdle in the fuller implementation of the provisions of the Bill is likely to be the introduction of the concept of a Competent Authority into the provisions of this Bill which is very novel. Such a concept is not found any where in similar enactments in any other countries of the world. This looks like wholly an Indian concept. Though we may be able to claim a sort of originality about such concept, this concept may prove to be inconsistant with the main objectives of the Bill. I am afraid that this new concept of Competent Authority may land us in absurdity. It may also involve many constitutional problems. These constitutional problems will relate to the constitutional position of the Speaker of the House of People, the Chairman of the Council of States and the President of India vis-a-vis the provisions with regard to their functions made in the Bill.
- 8. This requires, some detailed explanation. The following are the provisions concerning Competent Authority:—
 - (i) Under Clause 2, which provides for certain definitions in Sub-Clause (2) of that Clause, Competent Authority is not defined; but only a table is given. In the matter of allegations against the Prime Minister, the Competent Authority proposed is the Speaker of the House of People. In the matters of allegations about Members of Parliament the Competent Authority proposed is the Chairman of the Council of States, in case of Member of that Council and the Speaker of the House of People in case of the Member of that House and where the complaint is against the Speaker the Competent Authority proposed is the Deputy Speaker of the House of People. There appears to be no similar provision where the complaint is against the Chairman of the Council of States. With regard to the Members of Legislative Assemblies for Union Territories, the same mode has been adopted.
 - (ii) Under Clause 14, Sub-Clause (1) it is provided that when the Lokpal proposes to conduct an enquiry he shall forthwith forward a copy of the complaint to the Competent Authority concerned. Thus 'the Competent Authority is empowered to receive such a copy of the complaint forwarded by the Lokpal.
 - (iii) Under Clause 17, Sub-Clause (1) if the Lokpal is satisfied that no allegation made in the complaint has been substantiated either wholly or partly he shall close the case and intimate to the Competent Authority along with others accordingly.

- (iv) If, however, the Lokpal is satisfied that all or any of the allegations made in the complaint have been substantiated either wholly or partly he shall by report in writing communicate his findings and recommendations to the Competent Authority. Thus at this stage the Competent Authority, is empowered to receive the communication about the allegations being substantiated wholly or partly and the recommendations of the Lokpal; and
- (v) where the allegations have been substantiated and such allegation has been sent to the Competent Authority, it is provided under Clause 17, Sub-Clause (2) that the Competen Authority shall examine the report forwarded to it under part (b) of Sub-Clause (1) and communicate to the Lokpal within three months of the date of the receipt of the record, the action taken or proposed to be taken on the basis of the report. The Competent Authority is here empowered to take certain action.

These are all the provisions made in the Bill about the status, functions and the jurisdiction of the Competent Authority.

9. Now it is obvious that when the Speaker as a Competent Authority will have to examine the report forwarded by Lokpal under part (b), Sub-Clause (1) of Clause 17 and take some action thereon or propose to take any action on the basis of that report, then such action may be either just or even unjust. This means such action of the Competent Authority will be liable to criticism in both Houses of Parliament and thereby the constitutional position of the Speaker, as Speaker will be completely undermined. His office as Speaker of the House of People and his office as Competent Authority may come into conflict when he is required to take some action. The office of the Speaker cannot be criticised at all. Whereas the office of the Competent Authority assumed by the Speaker cannot be allowed to be immune from criticism. Similar would be the case where a Chairman of the Council of States or a Speaker of the Legislative Assembly of any Union Territory are respectively the Competent Authorities.

10 If the Speaker is not to be the Competent Authority for the above mentioned reasons, who shall be the Competent Authority for the categories of the people mentioned in the table?

It is very hard to find a constitutionally appropriate answer. During the discussion in the Joint Committee many, including myself, had suggested the President of India as the Competent Authority for the Prime Minister. Some of them even suggested an amendment to the Constitution to carry out this purpose. However, later on this idea was abandoned. Such an amendment would have very seriously affected the constitutional position of the President of India empowering him with certain powers which Constitution of India does not allow him to possess and which in turn would also have seriously affected the very basis of the parliamentary system of Government. Thus that suggestion was not proper. The reasons for which the President of India cannot be a Competent Authority are also the reasons as to why the Speaker or Chairman of Council of States cannot be the Competent Authority under the scheme of Lokpal Bill. Thus considering all the pros and cons, I am of the firm opinion that the concept which is newly introduced for the first time in

our Indian Lokpal Bill is a concept riddled with so many practical difficulties, constitutional impropriety and may also land us in absurdity. I have, therefore to suggest that the concept of the Competent Authority and the provisions relating to such Authority should be deleted completely and the Lokpal alone should be allowed to function, right from the commencement of receiving complaints till making a report, under Clause 17, Sub-Clauses (1) and (2) or a Special Report under same Clause, Sub-Clause (3) to the President of India. The question involved about the Competent Authority is so important from constitutional point of view that if this provision about the Competent Aulthority as retained, ther it may be liable or being declared as ultra vires of the Constitution and therefore null and void, besides turning the two Houses of Parlia ment into such uncontrollable situation when accusation from each section may be heard against the Members, Ministers and even against the Speaker himself. Such situation will be intolerable and the laudable objective of the Bill may remain unrealized. It seems that in similar enactments in other countries of the world such a provision about 'the Competent Authority is not found because the other countries appear to have realized that there should be one single functionary namely the Ombudsman, which is equivalent to our Indian Lokpal. Under Clause 24 which is now added, it is proposed that President may by order in writing and subject to such conditions or limitations as may be specified in the order require the Lokpal to inquire into the allegations of misconduct specified in the order in respect of a public man, and notwithstanding any thing contained in this Act, the Lokpal shall comply with such order. This provision may cut across whatever independence the Lokpal has been given under the Bill; and also will affect the nature of this Parliamentary Institution proposed to be established in the name and office of Lokpal, thus probably resulting in the non-realisation of the objectives of the Bill.

- 11. Yet another important hurdle in the realisation of the laudable objectives of this Bill would be the vague and loose definition of "misconduct". The provision about misconduct by a public man is made under Clause 3 of the Bill. The definition runs as follows:
 - "(1) A public man, other than a legislator, commits misconduct:
 - (a) if he is actuated in the discharge of his functions as such public man by corrupt motives; or
 - (b) if he abuses, or attempts to abuse or knowingly allows to be abused, his position as such public man for securing for himself or for any of his relatives or associates any valuable thing or pecuniary advantage; or
 - (c) if any act or omission by him constitutes corruption.
 - (2) A Legislator commits misconduct if he abuses, or attempts to abuse, or knowingly allows to be abused, his position as such Legislator for securing for himself directly or indirectly any valuable thing or pecuniary advantage; and
 - (3) A public man who abets, or conceals or attempts to conceal from detection, the commission of misconduct of the nature specified in Sub-Section (1) or, as the case may be, Sub-Section (2), by another public man also commits misconduct."

12. Now the judicial definition of the misconduct in various rulings of the Competent Courts is plain and simple. In simple language, it means that conduct which is against rules, conventions or propriety. Compared to this definition of misconduct the definition which is embodied in Clause 3 is so far reaching and so vague. According to the definition given in Clause 3, a public man commits misconduct if he is actuated in the discharge of his functions as such public man by corrupt motives. What is this act of being actuated? It is so vague. In part (b), Sub-Clause (1), Clause 3 even an attempt to abuse his position is treated as misconduct. What is this attempt to abuse? Again in part (c) of the same Sub-Clause (1), Clause 3, it is provided that any act or omission constitutes corruption. Now what is this omission? Thus it will be seen that the definition as embodied in Clause 3 provides something far more than what is misconduct. If the Government want to make provision for matters connected with corruption, it will be welcome, but in that event the title of the Bill and the enacting formula, as well as statements of objects and reasons will have to be suitably amended.

13. The last but not the least point relates to the provision about the the Union Members of Parliament and Members of Legislatures of Territory. (Incidentally I may mention here that if a Union Territory has a Legislature a Capital, a Cabinet and a High Court, it would be termed as a State, and should cease to be Union Territory. If the above mentioned attributes of a State are absent, then it can be termed as Union Territory). While I am prepared myself to submit to any proceedings of any act as a Member of the House of People against any allegation, it is very hard for me to concur with regard to the provisions bringing the Members of Parliament and State Legislatures of Union Territory within the purview of the jurisdiction of the Lokpal. No similar enactment of any country of the world except one contains a provision implicating the Members of the Parliament or the Members of Legislature under the jurisdiction of their Ombudsman. The British Law on the subject provides that any complaint of allegation must be routed only through the Members of Parliament, According to the British Law the Members of Parliament are the carriers of such complaints. Such is the worthy place given to the Members of the Parliament in British Law and it is for obvious reasons. The reason is, Members of Parliament do not possess any executive power and, therefore, they cannot exercise such power. Therefore, the Indian example will be the only example where Members of Parliament who do not possess that executive power (therefore the question of whose abuse of power does not arise) are implicated in the provisions of this Bill. The provisions in this Bill implicating the Members of Parliament and Legislative Assemblies of Union Territories may prove to be a frightening sword on the neck of the Members and it may impair the freedom of such Members which is so carefully guaranteed under the Constitution.

14. I had suggested in the very first general discussion on the provisions of the Bill not to include the Members of Parliament and even now I continue to believe the same. It is for the Hon'ble Members to think deeply about it. It may possibly happen that the real and big centres of corruption may grow by leaps and bounds as this Bill may not be applicable to them; and it may possibly happen that a few Members

of Parliament who may be belonging to the lower strata of the society may fall victims.

15. The above mentioned suggestions are made with a view to effectively implementing the laudable objectives of the Bill. It is for the Hon'ble Members of both the Houses of Parliament to give such consideration as these suggestions deserve.

B. C. KAMBLE

New Delhi; July 18, 1978. Asadha 27, 1900 (Saka).

X

As I differ with the majority of the Members of the Joint Committee on several important provisions of the Bill, I am constrained to submit the following note of dissent:

- I. (a) Scope of the Bill: Chief Ministers: They should not have been omitted from the purview of the proposed Central Legislation. The argument that the State Legislature is competent to enact similar law for investigation by a Lokpal or Lokayukta allegations of corruption against a Chief Minister and, therefore, the Centre should not encroach upon this area ignores the principle of concurrent jurisdiction as embodied in the Indian Constitution. Further, it appears mere wishful thinking that States would automatically follow the example of the Centre in extending the proposed legislation to a Prime Minister. Omission of Chief Ministers seems to be quite inappropriate particularly when the Centre has the power to appoint a Commission of Enquiry in respect of such allegations against a Chief Minister under the Commissions of Enquiry Act, 1952 but such machinery is inadequate as a Commission of Enquiry has not the benefit of an independent machinery of investigation at its disposal. In order to preserve the autonomy of a State in this area, however, it could have been provided that, in case, a corresponding State law provided for an enquiry against a Chief Minister, the Lokpal under the Central Act should not enquire into such matter. Of course, it remains to add that under the Central Legislation, any complaint of misconduct which amounts to a breach of privilege of the State Legislature would have to be dealt with under the provisions of article 194(3) of the Constitution.
- (b) The provisions of the Bill should have been extended to the high ranking Civil Servants of the Union Government viz. Secretaries, Additional Secretaries, Joint Secretaries and Deputy Secretaries all of whom have and exercise wide powers in administration. The Committee have, however, rejected the proposal on the ground that: "As it is of the view that since the proposed Bill provided only for Enquiries into allegations of mis-conduct against 'Public men' and of corruption at 'higher political levels' to suggest such an amendment...... would go beyond the scope of the Bill" (See para 43 of the Report) I am unable to agree with this view. Statement of objects and Reasons sets out the origin and history of Lokpal Bills introduced in 1968 and 1971 and then proceeds to add

"The matter has been re-examined having regard to the recommendations of the A.R.C. the provisions of the 1971 Bill and other laws on the subject enacted in various States from time to time and the experience of the functioning of such institutions in the States where they have been set up. In the light of this re-examination, it is proposed to alter the scheme of the Lokpal as incorporated in the 1971 Bill in material respects for making the institution of Lokpal an effective instrument to combat the problem posed by corruption at higher political levels".

It would have, therefore, been seen that the present Bill is re-drafted on the basis of earlier Bills which applied to executive officers (including Secretaries) and Ministers. It is true that in determining the scope of deliberations and enquiry of a Joint Committee, the Committee cannot amend or revise the provisions of the Bill so as to obstruct whittle down the principle of a Bill which is to be found from the long title, clauses of the Bill and the schedule, if any, to the Bill. In my view, extension of the Bill to Secretaries, far from whittling down the principle of combating problem of corruption at higher political levels would, on the contrary, strengthen this objective, since the relationship between a Minister and his Secretary is comparable to that of between partners or even between husband and wife. It is also very pertinent to note that original clause 11(2) present clause 10(2)—empowered a Lokpal to enquire into any act or conduct of any other person (which would include a Secretary also), if it was found necessary to inquire into any allegations of misconduct against a public man. Even more emphatic were the provisions of the original clause 23(1) of the Bill which provided conferment of additional functions on Lokpal and which, therefore, included an inquiry by a Lokpal into the allegations of mis-conduct against a Secretary. Sub-clause (1) of Clause 23 is now deleted. But this deletion is immaterial so far as the question of determining the principle of original Bill from clauses thereof is concerned It is, therefore, submitted that the Joint Committee had the nower to extend the Bill to Secretaries. In any event, it is competent for the Parliament to enact such an extension.

II. Mis-conduct: Members of Parliament, unlike Ministers, do not possess executive powers, though as elected representative they have to represent grievances and demands of people and sometime of individuals also in Parliament and even outside it before Ministers and Government servants. But they do not have any executive power and, therefore, stand on a different footing from Ministers. As such, there is a valid basis for treating them differently from Ministers and therefore, defining, qua them, "Misconduct" narrowly. But misconduct as now defined in clause 3(2) is unduly restrictive and should have been enlarged so as to cover securing any valuable thing or pecuniary advantage not only for himself but, as is provided in the case of other public man for his relatives and associates also. It should have also been made clear as is done in section 5(1)(b) of the Prevention of Corruption Act, 1947, that such thing or advantage should have been secured by a legislator without consideration or for a consideration which he knows to be inadequate However, the definition of 'Relative' in explanation to sub-clause (3) of Clause 3 of the Bill is confined only to a few relatives by blood and marriage only: it should have included other relatives also mentioned in the definition of the said term under section 6 of Companies Act, 1956.

III. Competent Authority: It is rather difficult to determine, in case of Prime Minister, the Competent Authority. However, the appointment of Speaker as Competent Authority is open to serious objections. It will affect the impartiality and dignity of the high office of the Speaker. It is clear from the provisions of the Bill (See Clause 17) that the action taken or proposed to be taken by the Speaker is subject to scrutiny by the Lokpal and further if Lokpal is not satisfied with such action, he has the power to make a special report to the President and the Parliament can consider any such report or annual report made by the Lokpal. Thus, the Speaker's decision regarding the action is subject to scrutiny and criticism both by the Lokpal and the Parliament. Such a position is bound to compromise Speaker's position. It seems to me, therefore, preferable to appoint the President as the competent authority in case of Prime Minister as the Council of Ministers on whose advice the President is bound to act in such matter is responsible to the Parliament.

There are a few other provisions but of less importance on which also I differ from the Committee but I do not wish to encumber this note with the same.

NARENDRA P. NATHWANI

NEW DELHT;

July 18, 1978.

Asadha 27, 1900 (Saka).

Bill No. 88-B of 1977

THE LOKPAL BILL, 1977

(As reported by the Joint Committee)

(Words side-lined or underlined indicate the amendments suggested by the Committee; asterisks indicate omissions.)

A

BILL

to provide for the appointment of a Lokpal to inquire into allegations of misconduct against public men and for matters connected therewith.

BE it enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows:—

PRELIMINARY

1. (1) This Act may be called the Lokpal Act, 1978.

(2) It extends to the whole of India.

aned the Lokpai Act, 19

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Short title, extent and commencement.

2. (1) In this Act, unless the context otherwise requires,—

Definitions.

(a) "competent authority", in relation to a complaint against a public man, means the competent authority in relation to such complaint determined in accordance with the provisions of subsection (2) and the rules made thereunder:

- (b) "complaint" means a complaint alleging that a public man has, while holding any of the offices referred to in clause (h), committed misconduct;
- (c) "complaint against a legislator" means a complaint alleging misconduct by a person who, at the time of the alleged commission of such misconduct was a Member of Parliament without being a member of the Council of Ministers for the Union or a Member of the Legislative Assembly for a Union territory without being a member of the Council of Ministers for such Union territory;
- (d) "corruption" includes anything made punishable under Chapter IX of the Indian Penal Code or under the Prevention of Corruption Act. 1947;

45 of 1860. 2 of 1947.

- (e) "Lokpal" means a person appointed under section 4 as the Lokpal and, where a Special Lokpal is appointed under section 3 for exercising jurisdiction in relation to any complaints or any classes of complaints, includes, for the purpose of such complaints or classes of complaints, such Special Lokpal;
- (f) "misconduct" means misconduct (whether committed before or after the commencement of this Act or within or outside India) of the nature specified in section 3;
 - (g) "prescribed" means prescribed by rules made under this Act;
- (h) "public man" means a person who holds or has held the
 - (i) a member (including a Deputy Minister) of the Council of Ministers for the Union;
 - (ii) a member of either House of Parliament;
 - (iii) a member (including a Deputy Minister) of the Council of Ministers for a Union territory;
 - (iv) a member of the Legislative Assembly for any Union territory;
 - (v) a member of the Executive Council under the Delhi Administration Act, 1966;

19 of 1966.

- (vi) the Mayor of a Municipal Corporation in any Union territory;
- (i) "public servant" shall have the same meaning as in section 21 of the Indian Penal Code.

45 of 1860.

(2) The competent authority in relation to a complaint under this Act shall be determined in accordance with the provisions of the Table below with reference to the office held by the person against whom such complaint is made at the time of the commission of the misconduct alleged to have been committed by such person in the complaint:

Provided that where during the period any misconduct is alleged to have been committed by a person in a complaint, such person held successively different offices, the competent authority shall be deter-

mined with reference to the last of the offices held by him during that period.

THE TABLE

Sl. No. Office	Competent authority
1. Prime Minister	The Speaker of the House of the People.
 Any other Member (including a Deputy Minister) of the Council of Ministers for the Union. 	The Prime Minister.
3. Member of Parliament who is not a Member of the Council of Ministers for the Union.	The Chairman of the Council of States in the case of a Member of that Council and the Speaker of the House of the People in the case of a Member of that House and where the complaint is against such Speaker, the Deputy Speaker of the House of the People.
4. Member of the Legislative Assembly for any Union territory who is not a member of the Council of Ministers for the Union territory.	The Speaker of the Legislative Assembly and where the complaint is against such Speaker, the Deputy Speaker of the Legislative Assembly.
5. Any other office.	Such authority as may be pres- cribed.

3. (1) A public man, other than a legislator, commits misconduct-

(a) if he is actuated in the discharge of his functions as such public man by corrupt motives; or

Misconduct by a public man.

- (b) if he abuses, or attempts to abuse, or knowingly allows to be abused, his position as such public man for securing for himself or for any of his relatives or associates, directly or indirectly, any valuable thing or pecuniary advantage; or
 - (c) if any act or omission by him constitutes corruption.
- (2) A Legislator commits misconduct if he abuses, or attempts to abuse, or knowingly allows to be abused, his position as such legislator for securing for himself directly or indirectly any valuable thing or pecuniary advantage.
- (3) A public man who abets, or conceals or attempts to conceal from detection, the commission of misconduct of the nature specified in subsection (1) or, as the case may be, sub-section (2), by another public man also commits misconduct.

Explanation.—For the purposes of this section,—

- (a) "associate" in relation to a public man includes any person in whom such public man is interested;
- (b) "legislator" means a person who is a Member of Parliament without being a member of the Council of Ministers for the Union or a Member of the Legislative Assembly for a Union territory without being a member of the Council of Ministers for such Union territory;

- (c) a person shall be deemed to be relative of another if, and only if,—
 - (a) they are members of a Hindu undivided family; or
 - (b) they are husband and wife; or
 - (c) the one is related to the other in the manner indicated below:—
 - 1. Father.
 - 2. Mother (including step-mother).
 - 3. Son (including step-son).
 - 4. Son's wife,
 - 5. Daughter (including step-daughter).
 - 6. Son's son.
 - 7. Son's daughter.
 - 8. Daughter's husband.
 - 9. Daughter's son.
 - 10. Brother (including step-brother).
 - 11. Sister (including step-sister).

MACHINERY FOR INQUIRIES

Appointment of Lokpal. 4. (1) For the purpose of making inquiries in respect of complaints under this Act, the President shall, after consultation with the Chief Justice of India, the Chairman of the Council of States and the Speaker of the House of the People, appoint, by warrant under his hand and seal, a person to be known as the Lokpal:

Provided that, before expressing his views, the Chairman of the Council of States or the Speaker of the House of the People may consult the leaders of the various Parties and Groups in the Council of States or, as the case may be, the House of the People.

(2) Every person appointed as the Lokpal shall, before entering upon his office, make and subscribe before the President, or some person appointed in that behalf by the President, an oath or affirmation in the form set out in the Schedule.

Lokpal to be ineligible to hold other offices.

- 5. The Lokpal shall not be a Member of Parliament or a Member of the Legislature of any State and shall not hold any office of trust or profit (other than his office as Lokpal), or be connected with any political party, or carry on any business, or practise any profession, and accordingly, before he enters upon his office, a person appointed as the Lokpal shall,—
 - (a) if he is a Member of Parliament or of the Legislature of any State, resign such membership; or
 - (b) if he holds any office of trust or profit, resign from such office; or
 - (c) if he is connected with any political party, sever his connection with it; or
 - (d) if he is carrying on any business, sever his connection (short of divesting himself ownership) with the conduct and management of such business; or

- (e) if he is practising any profession, cease to practise profession.
- 6. (1) A person appointed as the Lokpal shall hold office for a term of Term of five years from the date on which he enters upon his office:

Provided that-

office and other conditions of service of

- (a) the Lokpal may, by writing under his hand addressed to the Lokpal. President, resign his office;
- (b) the Lokpal may be removed from his office in the manner provided in section 7.
- (2) On ceasing to hold office, the Lokpal shall be ineligible for further employment to any office of profit under the Government of India or the Government of a State.
- (3) There shall be paid to the Lokpal in respect of time spent on actual service salary at the rate of five thousand rupees per mensem:

Provided that if the Lokpal is, at the time of his appointment, in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of service as the Lokpal shall be reduced-

- (a) by the amount of that pension; and
- (b) if he has, before such appointment, received, in lieu of a portion of the pension due to him in respect of such previous service, the commuted value thereof, by the amount of that portion of the pension; and
- (c) if he has before such appointment, received a retirement gratuity in respect of such previous service, by the pension equivalent of that gratuity.
- (4) The Lokpal shall be entitled without payment of rent to the use of an official residence.
- (5) The allowances and pension payable to, and other conditions of service of, the Lokpal shall be such as may be determined by the President having regard to the allowances and pension payable to, and other conditions of service of the Chief Justice of India:

Provided that the allowances and pension payable to, and other conditions of service of, the Lokpal shall not be varied to his disadvantage after his appointment.

7. (1) The Lokpal shall not be removed from his office except by an Removal order of the President passed after an address by each House of Parlia- of ment supported by a majority of the total membership of that House and Lokpal. by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

(2) The procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of the Lokpal under sub-section (1) shall be as provided in the Judges (Inquiry) Act, 1968, in relation to the removal of a Judge and, accordingly, the provisions of that Act shall, subject to necessary modifications, apply in relation to the removal of the Lokpal as they apply in relation to the removal of a Judge.

51 of 1968

Special Lokpals.

8. (1) Notwithstanding anything contained in section 4, if the President is satisfied on a report from the Lokpal that it is necessary so to do for the expeditious disposal of complaints under this Act, he may, after consultation with the Chief Justice of India, the Chairman of the Council of States and the Speaker of the House of the People, appoint, by warrant under his hand and seal, one or more persons to be a Special Lokpal or Special Lokpals for exercising jurisdiction in relation to such complaints or such classes of complaints under this Act as may be specified in the warrant:

Provided that, before expressing his views, the Chairman of the Council of States or the Speaker of the House of the People may consult the leaders of the various Parties and Groups in the Council of States or, as the case may be, the House of the People.

(2) A Special Lokpal shall hold office for a term of five years or for such shorter term as may be specified in the warrant of his appointment and a Special Lokpal appointed for a term of less than five years shall be eligible for reappointment:

Provided that the total period for which a person may hold the office of Special Lokpal shall in no case exceed five years.

(3) Save as otherwise expressly provided in this Act, the provisions of this Act relating to the Lokpal, including the provisions relating to the oath or affirmation to be made by the Lokpal, the ineligibility of the Lokpal to hold other offices, the conditions of service of the Lokpal and removal of the Lokpal, the functions, powers and duties of the Lokpal, shall apply in relation to a Special Lokpal as they apply in relation to the Lokpal but nothing in this sub-section shall be construed to enable a Special Lokpal to exercise jurisdiction in relation to any complaint or class of complaints not specified in the warrant by which he was appointed.

Staff of Lokpal.

- 9. (1) The Lokpal shall appoint a Secretary and such other officers and employees as may be prescribed to assist him in the discharge of his functions (including verification and inquiries in respect of complaints) under this Act.
- (2) Without prejudice to the provisions of sub-section (1), the Lokpal may, for the purpose of dealing with any complaints or any classes of complaints, secure—
 - (i) the services of any officer or employee or investigating agency of the Central Government or a State Government with the concurrence of that Government; or
 - (ii) the services of any other person or agency.
- (3) The terms and conditions of service of the officers and employees referred to in sub-section (1) and of the officers, employees, agencies and persons referred to in sub-section (2) (including such special conditions as may be considered necessary for enabling them to act without fear in the discharge of their functions) shall be such as may be prescribed in consultation with the Lokpal.

- (4) In the discharge of their functions under this Act, the officers and employees referred to in sub-section (1) and the officers, employees, agencies and persons referred to in sub-section (2) shall be subject to the exclusive administrative control and direction of the Lokpal.
- (5) The officers and employees referred to in sub-section (1) and the officers, employees, agencies and persons referred to in sub-section (2) shall also assist the Special Lokpals (if any) in the discharge of their functions.

JURISDICTION AND PROCEDURE IN RESPECT OF ENQUIRIES

10. (1) Subject to the other provisions of this Act, the Lokpal may Jurisdicinquire into any matter involved in, or arising from, or connected with, tion of any allegation of misconduct against a public man made in a complaint Lokpal under this Act.

(2) The Lokpal may inquire into any act or conduct of any person other than a public man in so far as he considers it necessary so to do for the purpose of his inquiry into any allegation of misconduct against a public man:

Provided that the Lokpal shall give such person a reasonable opportunity of being heard and to produce evidence in his defence.

- (3) No matter in respect of which a complaint may be made under this Act shall be referred for inquiry under the Commissions of Inquiry Act, 1952, except on the recommendation or with the concurrence of the Lokpal.
- 11. (1) The Lokpal shall not inquire into any matter concerning any Matters person if he has any bias in respect of such matter or person and if any not subdispute arises in this behalf, the President shall, on an application made ject to by the party aggrieved, obtain, in such manner as may be prescribed, the furisdicopinion of the Chief Justice of India and decide the dispute in conformity with such opinion.

60 of 1952.

80 of 1952,

- (2) The Lokpal shall not inquire into any matter which has been referred for inquiry under the Commissions of Inquiry Act, 1952, on his recommendation or with his prior concurrence.
- (3) The Lokpal shall not inquire into any allegation of misconduct against a public man if the complaint in respect thereof is made after the expiry of five years from the date on which the misconduct is alleged to have been committed:

Provided that the Lokpal may entertain such a complaint, if the complainant satisfies him that he had sufficient cause for not making the complaint within the said period of five years.

12. (1) Any person other than a public servant may make a complaint Comunder this Act to the Lokpal.

plaints.

Explanation.—For the purposes of this sub-section, public servant means,--

(a) any person who is a member of a Defence service or of a civil service of the Union or a State or of an all-India service or holds any post connected with Defence or any civil post under the Union or a State;

(b) any person in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company, as defined in section 617 of the Companies Act, 1956.

1 of 1956.

(2) Notwithstanding anything contained in sub-section (1), a complaint against a legislator shall be made to the competent authority (hereafter in this section referred to as the appropriate authority) concerned and that authority may, having regard to the nature of the allegations made in the complaint, the provisions of article 105 of the Constitution or, as the case may be, section 16 of the Government of Union Territories Act, 1963, and all the circumstances of the case, refer the complaint to the Lokpal, or deal with, or make orders for dealing with, the complaint in such manner as that authority may deem fit.

20 of 1963.

- (3) The complaint shall be in the prescribed form and shall set forth particulars of the misconduct alleged and shall be accompanied by an affidavit in support of the allegation of misconduct and the particulars thereof and a certificate in the prescribed form in respect of the deposit under sub-section (4) or, if the complainant is unable to make the deposit, an application for exemption from the requirement as to such deposit.
- (4) The complainant shall deposit in such manner and with such authority or agency as may be prescribed a sum of one thousand rupees to be available for disposal under section 25:

Provided that the Lokpal or, as the case may be, 'the appropriate authority may for sufficient cause to be recorded in writing exempt a complainant from the requirement under this sub-section.

- (5) Notwithstanding anything contained in the foregoing sub-sections, any letter written to the Lokpal or, as the case may be, the appropriate authority by a person in any jail or other place of custody or in any asylum or other place for insane persons may, if the Lokpal or, as the case may be, the appropriate authority is satisfied that it is necessary so to do be treated as a complaint made in accordance with the provisions of this section.
- (6) Notwithstanding anything contained in any other enactment, it shall be the duty of a police officer or other person in charge of any jail or other place of custody or of any asylum or other place for insane persons to forward, without opening, any letter addressed to the Lokpal or the appropriate authority by a person imprisoned or detained in such jail, place of custody, asylum or other place, to the Lokpal or the appropriate authority without delay.
- 13. (1) If the Lokpal is satisfied, after considering a complaint and after making such verification as he deems appropriate,—
 - (a) that the complaint is not made within the period of five years specified in sub-section (3) of section 11 and that there is no sufficient cause for entertaining the complaint; or
 - (b) that he cannot make an inquiry in respect of the complaint by reason of the provisions of sub-section (1) or (2) * * of section 11; or

Prell-minary scrutiny of complaints by Lokpal.

- (c) that the complaint is frivolous or vexatious or is not made in good faith; or
- (d) that there are no sufficient grounds for inquiring into the complaint

the Lokpal shall dismiss the complaint after recording his reasons therefor and communicate the same to the complainant and to the competent authority concerned.

- (2) The procedure for verification in respect of a complaint under sub-section (1) shall be such as the Lokpal deems appropriate in the circumstances of the case and in particular the Lokpal may, if he deems it necessary so to do, call for the comments of the public man concerned.
- 14. (1) If, after the consideration and verification under section 13 in Procerespect of a complaint, the Lokpal proposes to conduct any inquiry, he dure in

dure in respect of inquiries.

- (a) shall forthwith forward a copy of the complaint to the competent authority concerned;
- (b) may make such orders as to the safe custody of documents relevant to the inquiry as he deems fit;
- (c) shall, at such time as he considers appropriate, forward a copy of the complaint to the public man concerned and afford him an opportunity to represent his case.
- (2) Every such inquiry shall, unless the Lokpal, for reasons to be recorded in writing, determines otherwise, be conducted in camera:

Provided that an inquiry in respect of a complaint against a legislator shall be conducted only in camera.

- (3) Save as aforesaid, the procedure for conducting any such inquiry shall be such as the Lokpal considers appropriate in the circumstances of the case.
- 15. (1) Subject to the provisions of this section, for the purpose of Evidence. any inquiry (including the verification under section 13), the Lokpal—
 - (a) may require any public servant or any other person, who, in his opinion is able to furnish information or produce documents relevant to such inquiry, to furnish any such information or produce any such document;
 - (b) shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—
 - (i) summoning and enforcing the attendance of any person and examining him on oath;
 - (ii) requiring the discovery and production of any document;
 - (iii) receiving evidence on affidavits;
 - (iv) requisitioning any public record or copy thereof from any court or office;
 - (v) issuing commissions for the examination of witnesses or documents; and

5 of 1908.

- (vi) such other matters as may be prescribed.
- (2) A proceeding before the Lokpal shall be deemed to be a judicial proceeding within the meaning of section 193 of the Indian Penal Code.

45 of 1860.

- (3) Subject to the provisions of sub-section (4),-
- (a) no obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to Government or any public servant, whether imposed by any enactment or by any provision of law whatever, shall apply to the disclosure of information for the purposes of any inquiry (including the verification under section 13) under this Act; and
- (b) the Government or any public servant shall not be entitled, in relation to any such verification or inquiry, to any such privilege in respect of the production of documents or the giving of evidence as is allowed by any enactment or by any provision of law whatever in legal proceedings.
- (4) No person shall be required or authorised by virtue of this Act to furnish any such information or answer any such question or produce so much of any document—
 - (a) as might prejudice the security, or defence, or international relations, of India (including India's relations with the Government of any other country or with any international organisation), or the investigation or detection of crime; or
 - (b) as might involve the disclosure of proceedings of the Cabinet of the Union Government or of the Cabinet of the Government of any State or Union territory or of the Executive Council under the Delhi Administration Act, 1966, or of any Committee of such Cabinet or Executive Council,

19 of 1966.

and for the purpose of this sub-section, a certificate issued by a Secretary to the Government certifying that any information, answer, or portion of a document, is of the nature specified in clause (a) or clause (b) shall be binding and conclusive:

Provided that the Lokpal may require any information or answer or portion of a document in respect of which a certificate is issued under this sub-section to the effect that it is of the nature specified in clause (a) to be disclosed to him in private for scrutiny and if on such scrutiny the Lokpal is satisfied that such certificate ought not to have been issued, he shall declare the certificate to be of no effect.

Search and seizure.

- 16. (1) If the Lokpal has reason to believe that any document which, in his opinion, will be useful for, or relevant to, any inquiry under this Act, are secreted in any place, he may authorise any officer subordinate to him, or any officer of an investigating agency referred to in subsection (2) of section 9, to search for and to seize such documents.
- (2) If the Lokpal is satisfied that any document seized under subsection (I) would be evidence for the purpose of any inquiry under this Act and that it would be necessary to retain the document in his custody, he may so retain the said document till the completion of such tradity:

Provided that where such document is seized before the commencement of such inquiry, the Lokpal shall return the document before the expiration of a period of one year from the date on which it is seized unless such inquiry has been commenced before such expiration.

Explanation.—For the purposes of this sub-section, an inquiry in respect of a complaint—

- (a) shall be deemed to have commenced on the date on which the Lokpal forwards a copy of the complaint to the competent authority concerned under clause (a) of sub-section (1) of section 14;
- (b) shall be deemed to have been completed on the date on which the Lokpal closes the case under section 17.

2 of 1974.

- (3) The provisions of the Code of Criminal Procedure, 1973, relating to searches shall, so far as may be, apply to searches under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the words "Lokpal or any officer authorised by him" were substituted.
- 17. (1) If, after inquiry in respect of a complaint, the Lokpal is satisfied,—

Reports.

- (a) that no allegation made in the complaint has been substantiated either wholly or partly, he shall close the case and intimate the complainant, the public man and the competent authority concerned accordingly;
- (b) that all or any of the allegations made in the complaint have or has been substantiated either wholly or partly, he shall, by report in writing, communicate his findings and recommendations to the competent authority and intimate the complainant and the public man concerned about his having made the report.
- (2) The competent authority shall examine the report forwarded to it under clause (b) of sub-section (1) and communicate to the Lokpal, within three months of the date of receipt of the report, the action taken reposed to be taken on the basis of the report.
- (3) If the Lokpal is satisfied with the action taken, or proposed to be taken, on the basis of his report under clause (b) of sub-section (1), he shall close the case and intimate the complainant, the public man and the competent authority concerned accordingly, but where he is not so satisfied and if he considers that the case so deserves he may make a special report upon the case to the President and intimate the complainant, the public man and the competent authority concerned about his having made such report.
- (4) The Lokpal shall present annually to the President a consolidated report on the administration of this Act.
- (5) As soon as may be after, and in any case not later than ninety days from, the receipt of a special report under sub-section (3), or the annual report under sub-section (4), the President shall cause the same together with an explanatory memorandum to be laid before each House of Parliament.

Explanation.—In computing the period of ninety days referred to in this sub-section, any period during which Parliament, or, as the case may be, either House of Parliament, is not in session shall be excluded.

Miscellaneous

dixpenditure on
Lokpal
and
Special
Lokpals
to be
charged
on the
Consolidated
Fund of
India.

18. The salaries, allowances and pensions payable to, or in respect of, the Lokpal and the Special Lokpals shall be expenditure charged on the Consolidated Fund of India.

Secrecy of information.

19. (1) Any information obtained by the Lokpal, or by any officer, employee, agency or person referred to in section 9, in the course of, or for the purposes of, any verification or inquiry under this Act, and any evidence recorded or collected in connection therewith shall be treated as confidential and, notwithstanding anything contained in the Indian Evidence Act, 1872, no court shall be entitled to compel the Lokpal, or any such officer, employee, agency or person, to give evidence relating to such information or to produce the evidence so recorded or collected.

1 of 1872.

- (2) Nothing in sub-section (1) shall apply to the disclosure of the information or evidence referred to therein—
 - (a) for the purposes of this Act or for the purposes of any action or proceedings to be taken on any report under section 17; or
 - (b) for the purposes of any proceedings, for an offence of giving or fabricating false evidence, under the Indian Penal Code; or

45 of 1860.

- (c) for such other purposes as may be prescribed.
- 20. (1) No complaint against a Legislator or any proceedings (whether by way of verification, inquiry or otherwise) in respect of such complaint or any information in respect of such complaint or proceedings (including any evidence furnished, collected or recorded in relation to such complaint or in the course of or for the purpose of such proceedings) shall be disclosed or published by any person—
 - (a) where such complaint has been referred to the Lokpal under sub-section (2) of section 12, at any time before the dismissal of such complaint under sub-section (1) of section 13, or if the Lokpal conducts an inquiry into such complaint under section 14 at any time before he closes the case under clause (a) of sub-section (1) of section 17 or, as the case may be, before he makes a report in respect of the case under clause (b) of that sub-section;
 - (b) in any other case, before the competent authority concerned discloses or announces in the prescribed manner the findings in respect of the allegations made in such complaint:

Provided that nothing in this sub-section shall apply-

(i) to any disclosure for the purposes of this Act; or

Penalty
for disclosure
or publication of
information in
respect
of complaints
against
Legisla-

tors,

- (ii) to any disclosure or publication with respect to proceedings for any offence under this Act or any other law; or
- (iii) to any disclosure or publication for such other purposes as may be approved by the competent authority concerned.
- (2) Whoever contravenes the provisions of sub-section (1) shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.
- (3) The provisions of this section shall have effect notwithstanding anything in any other section of this Act or in any other enactment.
- 21. (1) Whoever intentionally offers any insult, or causes any interruption, to the Lokpal while the Lokpal is making any verification or conducting any inquiry under this Act, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.
- (2) Whoever, by words spoken or intended to be read, makes or publishes any statement, or does any other act, which is calculated to bring the Lokpal into disrepute, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

Intentional insult or interruption to, or bringing into disrepute, Lokpal.

2 of 1974.

- (3) The provisions of sub-section (2) of section 199 of the Code of Criminal Procedure, 1973, shall apply in relation to an offence under sub-section (1) or sub-section (2) as they apply in relation to an offence referred to in sub-section (2) of the said section 199, subject to the modification that no complaint in respect of such offence shall be made by the Public Prosecutor except with the previous sanction of the Lokpal.
- 22. (1) If, at any stage of a proceeding before the Lokpal, it appears to the Lokpal that any person appearing in such proceeding had knowingly or wilfully given false evidence or had fabricated false evidence with the intention that such evidence should be used in such proceeding, the Lokpal may, if satisfied that it is necessary and expedient in the interests of justice that the person should be tried summarily for giving or fabricating, as the case may be, false evidence, take cognizance of the offence and may, after giving the offender a reasonable opportunity of showing cause why he should not be punished for such offence, try such offender summarily, so far as may be, in accordance with the procedure prescribed for summary trials under the Code of Criminal Procedure, 1973, and sentence him to imprisonment for a term which may extend to three months, or to fine which may extend to five hundred rupees, or to both.

Power of Lokpal to try certain offences summarily.

2 of 1974.

45 of 1860.

(2) When any such offence as is described in section 175, section 178, section 179 or section 180 of the Indian Penal Code is committed in the view or presence of the Lokpal, the Lokpal may cause the offender to be detained in custody and may, at any time on the same day, take cognizance of the offence and, after giving the offender a reasonable opportunity of showing cause why he should not be punished under this section, sentence the offender to simple imprisonment for a term which may extend to one month, or to fine which may extend to five hundred rupees, or to both.

- (3) In every case tried under this section, the Lokpal shall record the facts constituting the offence with the statement (if any) made by the offender as well as the finding and the sentence.
- (4) Any person convicted on a trial held under this section may appeal to the High Court and the provisions of Chapter XXIX of the Code of Criminal Procedure, 1973, shall, so far as may be, apply to appeals under this section and the High Court may alter or reverse the finding, or reduce or reverse the sentence appealed against.

2 of 1974.

Explanation.—For the purposes of this sub-section "High Court" means the High Court within the jurisdiction of which the person convicted ordinarily resides or carries on business or personally works for gain or the High Court within whose jurisdiction the order of conviction has been passed.

(5) The provisions of this section shall have effect notwithstanding anything contained in the Code of Criminal Procedure 1973.

2 of 1974.

Action in case of false complaint.

- 23. (1) Every person who wilfully or maliciously makes any complaint which he knows or has reason to believe to be false under this Act shall be punished with imprisonment for a term which may extend to one year and shall also be liable to fine which may extend to three thousand rupees.
- (2) No Court, except a Court of Session, shall take cognizance of an offence under sub-section (1).
- (3) No such Court shall take cognizance of such offence except on a complaint in writing made by the Public Prosecutor at the direction of the Lokpal and the Court of Session may take cognizance of the offence on such complaint without the case being committed to it.
- (4) The Court of Session, on conviction of the person making false complaint, may award, out of the amount of fine, to the public man against whom such false complaint has been made such amount of compensation as it thinks fit.
- (5) The provisions of this section shall have effect notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973.

2 of 1974.

Conferment of additional functions on Lokpal.

- 24. *** (1) The President may, by order in writing and subject to such conditions or limitations as may be specified in the order, require the Lokpal to inquire into any allegations of misconduct specified in the order in respect of a public man and, notwithstanding anything contained in this Act, the Lokpal shall comply with such order.
- (2) *** When the Lokpal is to make any inquiry under sub-section (1), the Lokpal shall exercise the same powers and discharge the same functions as he would in the case of any inquiry made on a complaint under this Act and the provisions of this Act shall apply accordingly.
 - 25. The sum deposited by a complainant under section 12 shall,-
 - (a) in a case where the complaint is dismissed under clause (c) of sub-section (1) of section 13, stand forfeited to the Central Government;

Disposal of deposit

- (b) if the Lokpal, for reasons to be recorded in writing, so directs, be utilised for compensating the public man complained against; and
 - (c) in any other case be refunded to the complainant.

26. If the Lokpal is satisfied—

- (a) that all or any of the allegations made in a complaint have reward or has been substantiated either wholly or partly; and
- (b) that having regard to the expenses incurred by the complainant in relation to the proceedings in respect of such complaint comand all other relevant circumstances of the case the complainant plainant. deserves to be compensated or rewarded,

Compensation or or both payable in certain cases to

the Lokpal shall determine the amount which shall be paid to the complainant by way of such compensation or reward and the Central Government shall pay the amount or amounts so determined to the complainant.

27. (1) No suit, prosecution, or other legal proceeding, shall lie against Protecthe Lokpal, or against any officer, employee, agency or person referred tion. to in section 9, in respect of anything which is in good faith done, or intended to be done, under this Act.

- (2) Save as otherwise provided in Section 22, no proceedings or decision of the Lokpal shall be liable to be challenged, reviewed, quashed, or called in question, in any court.
- 28. The Lokpal may, by general or special order in writing, and sub- Power to ject to such conditions and limitations as may be specified therein, direct delegate. that any powers conferred or duties imposed on him by or under this Act [except the powers under the proviso to sub-section (3) of section 11, and the proviso to sub-section (4) of section 12, the power to dismiss a complaint under sub-section (1) of section 13, * the powers to close cases and make reports under section 17 and the powers under section 221 may also be exercised or discharged by such of the officers, employees or agencies referred to in sub-section (1) or sub-section (2) of section 9, as may be specified in the order.

29. (1) The President may, by notification in the Official Gazette, Power to make rules for the purpose of carrying into effect the provisions of this make

- (2) In particular and without prejudice to the generality of the foregoing provisions, such rules may provide for-
 - (a) the authorities required to be prescribed under sub-section (2) of section 2;
 - (b) the officers and employees who may be appointed under sub-section (1) of section 9;
 - (c) the terms and conditions of service of the officers, employees, agencies and persons referred to in sub-section (3) of section 9;

(d) the form in which complaints may be made under section 12 and the fees, if any, which may be charged in respect thereof;

- (e) the manner in which and the authorities or agencies with whom deposits shall be made under sub-section (4) of section 12 and the form in which certificates shall be furnished in respect of such deposits under sub-section (3) of section 12;
- (f) the matters referred to in sub-clause (vi) of clause (b) of sub-section (1) of section (5);
 - (g) any other matter which is to be or may be prescribed.
- (3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Saving.

30. Nothing contained in this Act shall be construed as affecting the constitution of, or the continuance of functioning or exercise of powers by, any Commission of Inquiry appointed under the Commissions of Enquiry Act, 1952, before the Commencement of this Act and no complaint shall be made under this Act in respect of any matter referred for inquiry to such Commission before such commencement.

60 of 1952,

Consequential amendment of Act 60 of 1952.

31. In section 3 of the Commissions of Inquiry Act, 1952, in sub-section (1), for the words, "The appropriate Government may", the words, brackets and figures "Subject to the provisions of sub-section (2) of section 10 of the Lokpal Act, 1978, the appropriate Government may" shall be substituted.

THE SCHEDULE

[See section 4(2)]

I, , having been appointed Lokpal,

swear in the name of God

do ______, that I will bear true faith and allegiance solemnly affirm

to the Constitution of India as by law established, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will.

AVTAR SINGH RIKHY,

Secretary.